

PUBLIC ACCOUNTS COMMITTEE
(1968-69)

(FOURTH LOK SABHA)

SIXTY-THIRD REPORT

[Action taken by Government on the recommendations of the Public Accounts Committee contained in their 21st Report (Fourth Lok Sabha) on Appropriation Accounts (Civil) 1965-66 and Audit Report (Civil) 1967 relating to Department of Atomic Energy, Ministries of External Affairs etc.]



LOK SABHA SECRETARIAT
NEW DELHI

April, 1969/Vaisakha, 1891 (Saka)

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**PUBLIC ACCOUNTS COMMITTEE
(1968-69)**

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SECRETARIAT

Shri Avtar Singh Rikhy—*Joint Secretary.*

Shri K. Seshadri—*Under Secretary.*

*Declared elected on 19th August, 1969 *vice* Shri M. M. Dharia, who resigned from the Committee.

INTRODUCTION

1. I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Sixty-third Report on the Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 21st Report (Fourth Lok Sabha) on Appropriation Accounts (Civil) 1965-66 and Audit Report (Civil) 1967 relating to Department of Atomic Energy, Ministry of External Affairs etc.

2. On 12th June, 1968, an "Action Taken" Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Committee in their earlier Reports. The Sub-Committee was constituted with following Members;

1. Shri D. K. Kunte—*Convener*
2. Shri C. K. Bhattacharyya
3. Shri K. K. Nayar
4. Shri Narendra Kumar Salve
5. Shrimati Tarkeshwari Sinha
6. Shri N. R. M. Swamy

3. The draft Report was considered and adopted by the Sub-Committee at their sitting held on 8th April 1969 and finally adopted by the Public Accounts Committee on 21st April 1969.

4. For facility of reference the main conclusions/recommendations of the Committee have been printed in thick type in the body of the Report. A statement showing the summary of the main recommendations/observations of the Committee is appended to the Report (Appendix I).

5. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Comptroller and Auditor General of India.

NEW DELHI;

April 28, 1969/Vaisakha 8, 1891 (S),

M. R. MASANI,
Chairman,
Public Accounts Committee.

CHAPTER I

REPORT

This Report of the Committee deals with Action Taken by Government on the recommendations of PAC contained in their Twenty-first Report (Fourth Lok Sabha) on the Appropriation Accounts (Civil), 1965-66 and Audit Report (Civil), 1967 relating to the Department of Atomic Energy, Ministries of External Affairs, Food, Agriculture, Community Development and Cooperation (Department of Community Development and Cooperation) Health and Family Planning and Works, Housing & Supply (Department of Supply), which was presented to the House on the 18th March, 1968.

1.2. Out of 29 recommendations contained in the Report action taken notes have been received in respect of 22 recommendations. A statement showing the recommendations in respect of which replies are still outstanding is given in Appendix I.

1.3. The action taken notes/statements received from the aforesaid Ministries/Departments of the Government have been categorised under the following heads :

(i) Recommendations/observations that have been accepted by Government :

S. Nos. 1, 2, 3, 7, 8—10 (Finance), 12 (Para 4.18), 13 (Paras 5.15 & 5.16), 14, 15 (Finance), 17, 18, 19, 20, 21, 23, 24, 25, 26 and 28.

(ii) Recommendations/observations which the Committee do not desire to pursue in view of the replies of the Government.

S. No. 27.

(iii) Recommendations/observations replies to which have not been accepted by the Committee and which require reiteration;

S. Nos. 5, 6, 11 and 12 (Para 4.17).

(iv) Recommendations/observations in respect of which Government have furnished interim replies.

S. No. 4.

1.4. The Committee desire that replies to the outstanding recommendations contained in the Report should be submitted to them expeditiously.

1.5. The Committee will now deal with action taken by Government on some of the recommendations.

Cooperative Societies in Delhi—Paragraphs 3.15—3.17 (S. No. 5).

1.6. In paragraph 3.1—3.15, the Committee had dealt in detail with the financial assistance given by Government to Cooperative Societies in Delhi by way of loans, subsidies and grants-in-aid and its recovery.

The Committee made the following observations in paragraphs 3.16—3.17 :

"The Committee note that out of 129 Societies which have defaulted in payment of loans, as many as 107 have gone into liquidation. The Committee desire that Government should take suitable measures to ensure recovery of loans to the maximum extent possible already given to these Societies under liquidation. The Committee also suggest that Government should investigate in detail the reasons due to which societies to whom Rs. 10,000 or more were advanced as loans, went into liquidation. Apart from taking suitable measures in the light of this analysis to effect recovery from other Co-operative Societies, the Committee would like Government to review the criteria for advancing loans to Co-operative Societies so as to avoid recurrence of such cases. (Para 3.16)

As regards the recovery of loans given to Societies for the rehabilitation of displaced persons the Committee suggest that the Department of Cooperation should intimate the details of recovery from Members of these Cooperative Societies to the Chief Settlement Commissioner so that these could be adjusted, if possible, against the compensation claims, if any, of these displaced persons. (Para 3.17)

1.7. In their reply dated the 5th October, 1968, the Department of Cooperation have stated :

"As a result of constant efforts being made, the recovery effected during the year 1967-68 is as under :

(In Rupees)		
Balance outstanding as on 31-3-67	Amount recovered	Balance as on 31-3-68
Principal 3,92,591·68	Principal 30,405·91	Principal 3,62,185·77
Interest 47,793·00	Interest 14,741·00	Interest 47,136·92*

*Includes further interest on overdue Principal.

Following steps have been taken for the early recovery of outstanding loans from the societies under liquidation :

Periodical meetings of the liquidators of the concerned societies are being held, where Registrar of Cooperative Societies, Delhi, reviews the progress of recovery and the efforts being made by them in this behalf. Wherever necessary, liquidators contact the Collector personally for pushing up the recoveries and taking suitable action. During the year 1967-68, 41 meetings were held for the purpose.

2. 381 cases involving the loans amounting to Rs. 3,55,850 have been referred since 1962-63 onwards, to the Collector, Delhi for recovery as arrears of land revenue.

3. A decision has been taken by the Delhi Administration on 30-7-68 to delegate the powers of Collector to the Assistant Registrar of Cooperative Societies so that the recovery of arrears may be expedited.

4. The total number of societies which were advanced loans of Rs. 10,000 or more and which went into liquidation is 40.

An examination of the causes leading to the liquidation of these societies reveals that these societies were brought under liquidation for one or more reasons indicated below :

- (a) These societies were mainly organised for the Refugees many of whom, in search of employment or business to rehabilitate themselves, have left Delhi and migrated to other parts of the country.
- " (b) Lack of interest on the part of management and members due to which some of these societies sustained heavy losses.
- (c) Due to gross mismanagement and serious irregularities in some of these societies, there was no possibility of the societies being rehabilitated.
- (d) Several societies ceased functioning due to large-scale and universal default in repayment of loans.

The main criterion for advancing loans to Cooperative Societies is their credit-worthiness and the standard of management. The Union Territories administrations have been again requested to exercise caution in determining the suitability of a society before giving loans and advances."

1.8. With regard to the recovery of loans given to the Societies for the rehabilitation of displaced persons, Government have stated :

"As suggested by the Committee, Registrar of Cooperative Societies, Delhi, had forwarded a list of the defaulting societies to the Chief Settlement Commissioner, Ministry of Labour Employment and Rehabilitation with the request to examine if the society's dues could be adjusted against any pending compensation claims. However, the Chief Settlement Commissioner has expressed his inability to initiate action in the absence of index number of the claims etc.

It may be mentioned that these loans were given for the purpose of rehabilitation of the refugees at the time of partition of the country. No such loans are now being given."

1.9. The Committee regret to observe that not much headway has been made in the recovery of loans given to the Cooperative Societies although 381 cases involving loans amounting to Rs. 3,55,850 had been referred since 1962-63 onwards to the Collector, Delhi for effecting recovery as arrears of land revenue. The Committee desire that Government should take effective measures to recover the outstanding dues and interest thereon expeditiously.

The Committee note that 40 Cooperative Societies which were each advanced loans of Rs. 10,000 or more had gone into liquidation. The Committee regret to observe that the main causes leading to the liquidation of these Societies were lack of interest on the part of management resulting in gross mismanagement and serious irregularities. The Committee feel that Government which had advanced substantial amounts to these Societies should have kept proper and contemporaneous watch over the functioning of these Societies. The Committee hope that before granting financial assistance to Cooperative Societies, in future, the Delhi Administration will invariably verify the viability of the Society, its managerial capability and the standing of the Members of the Society. The Committee need hardly stress that as soon as default on the part of a Cooperative Society comes to notice, necessary remedial measures should be taken before the position deteriorates to a point where the recovery of loans granted by Government is jeopardised.

1.10. The Committee note that the Chief Settlement Commissioner and expressed his inability to initiate action for the recovery of loans due from the Societies for rehabilitation of displaced persons by adjusting them against pending compensation claims, if any, in the absence of index number of the claim. This is indicative of the fact that proper care was not observed in taking down all relevant particulars of the Members of the Cooperative Society so as to secure Government's loans to the maximum extent possible. The Committee suggest that Government should issue suitable instructions for noting down all relevant details in respect of the Members of the Cooperative Society before any loan is granted, so that in the event of default, it could be recovered from all the available resources of the Members.

Contribution to Share Capital—Paragraph 3.28 (S. No. 6 of Appendix VIII of the Twenty-First Report—Fourth Lok Sabha).

1.11. In paragraph 3.28, the Committee had referred to losses suffered by the Cooperative Society in which Government had invested Rs. 4.75 lakhs and made the following observations :

“3.28 : The Committee are not able to appreciate how a Society in which Government have invested Rs. 4.75 lakhs and which has a turnover of Rs. 2 crores could suffer losses. The Committee would like Government to ensure prudent management of the Society to safeguard public funds invested in it.”

In their reply dated 5-10-68, the Department of Cooperation have stated :

“The Delhi Consumer Cooperative Wholesale Store suffered losses although it had a good turnover mainly due to the following reasons :

- (a) Preponderance of controlled commodities in the sales;
- (b) Locking up of capital with primaries to whom supplies were made on credit;
- (c) Heavy establishment expenses (Pay roll expenses) and other contingent charges in relation to the low gross profit;
- (d) Huge outstanding advances against certain parties and members of the Managing Committee (The advances outstanding on 21-5-67 were Rs. 4.99 lakhs);
- (e) Indiscriminate and ill-timed purchases made by authorised hands on behalf of the stores; and
- (d) The recruitment of inexperienced/inefficient staff.

The bulk of the turnover of the society was accounted for only by rationed commodities where the margin of profit is very low. As the operations in these commodities proved to be uneconomical, the society gave up the business in October, 1967. Fast selling and profitable items are being introduced like cycle tyres and tubes scooter tyres, vanaspati, blades, general merchandise, sugar etc. As regards recovery of amounts locked up with primaries, a recovery cell has been set up in the office of the Wholesale Society in charge of an officer lent on deputation by the Delhi Cooperative Department. Out of the amounts outstanding Rs. 95,128.97 have been recovered. Arbitration references have also been filed in 41 cases out of which awards in 23 cases have been obtained. Proceedings are in progress in the rest of the cases.

Notices preparatory to arbitration have also been served upon other stores defaulting payment. Efforts are also being made to reduce expenses on overheads like establishment charges.

As the elected management had failed to run the institution on proper lines and there were serious irregularities in the working of the store, losses continued piling up. Delhi Administration took notice of the worsening situation and in an attempt to improve the quality of management, superseded the elected management and replaced it by a nominated managing committee on the 28th June, 1967. The superseded managing committee challenged the order of the Administration through a writ petition filed in the Delhi High Court. Because of the pending writ petition and the uncertainty of its future, the nominated managing committee could not work effectively. The Delhi High Court quashed the order of supersession on 21st March, 1968. Consequently the old managing committee has taken control of the affairs of the store on the 28th March, 1968. The Delhi Administration propose to go in appeal and has filed an application for special leave to appear before the Supreme Court."

1.13. The Committee regret to note the losses suffered by the Delhi Consumer Cooperative Wholesale Store in which Government have invested Rs. 4.75 lakhs were mainly due to heavy establishment expenses, huge outstanding advances against certain parties and Members of the Managing Committee, indiscriminate and ill-timed purchases and the recruitment of inefficient staff.

1.14. The Committee take a serious view of the irregularities in working of the society which have resulted in piling up of losses. The Committee suggest that in the light of the lapses found in the working of this Cooperative Society a suitable check list should be devised for exercising contemporaneous and factual check in the working of the Cooperative Societies in order to retrieve the position before it becomes too late.

1.15. The Committee note that Government have applied for special leave to file an appeal before the Supreme Court against the judgement of the High Court quashing the order of supersession of the Managing Committee. They would like to know the outcome of the application.

1.16. The Committee need hardly stress that continuous effort should be made to recover the outstanding amounts due to the Cooperative Society as early as possible.

Default in repayment of loans—paragraphs 4.15 & 4.17 (Sr. Nos. 11 & 12).

1.17. During the period May, 1926 to March, 1966-67 loans aggregating Rs. 2,232.59 lakhs were sanctioned to the erstwhile Delhi Joint Water and Sewage Board/Delhi Municipal Corporation for implementation of certain water supply and sewage schemes. The loans were repayable in equated annual instalments together with interest at rates varying from 3½ to 6 per cent per annum. In case of 15 loans, the sanctions also provided that penal interest at the rate of 2½ to 3½ per cent, per annum would be recoverable in the event of non-repayment of the instalments of loans and non-payment of interest of the due dates. From June, 1964 onwards, the Corporation failed to make regular repayments of the instalments of loans and interest due thereon on the due dates. The instalments overdue for recovery on 31st March, 1966, of principal and interest amounted to Rs. 53.58

lakhs and Rs. 97.95 lakhs respectively. The Committee made the following observations in paragraphs 4.15 and 4.17 :

"4.15. The Committee regret to note that an amount of Rs. 151.53 lakhs (Rs. 53.58 lakhs principal and Rs. 97.95 lakhs as interest) was overdue for recovery from the Delhi Municipal Corporation on account of loans given by the Central Government for implementation of certain water supply and sewage schemes. It is also strange to note that even when the loans were sanctioned for a specific purpose the realisations of water and sewage taxes were credited to the general funds of the Corporation instead of being placed in a separate account for the repayment of the loans. The Committee feel that repayment of the instalments of the loans and interest should have been the first charge on the realisations from water and sewage taxes."

"4.17. The Committee hope that, with the implementation of the above instructions, it would be possible for Government to get back instalments of loans and interest due from the Municipal Corporation. The Committee need hardly stress that, when loans are granted for specific purposes, their repayment on due dates should be insisted upon and defaults in repayments should be viewed seriously. The Committee would also like to be informed of the recoveries of the overdue instalments in this case."

1.18. In their reply dated 1st February, 1969, the Department of Health have stated :

"The accounts of the Water Supply and Sewage Disposal Undertaking were already being maintained separately from those of the General Wing, except in the case of the collection of :

- (a) water charges recovered on the basis of metered water supply and flat rate supply; and
- (b) water tax and scavenging tax collected as components of the property taxes."

According to the practice existing in March, 1967, so far as amounts collected in respect of (a) above were concerned, these were credited straight away to the account of the Undertaking. The amounts realised in respect of (b) above which were recovered as components of property taxes were initially credited to the accounts of the General Wing and later credited by that Wing to the accounts of the Undertaking. However, an amount of Rs. 120 lakhs on account of water tax and scavenging tax collected by the General Wing up to 31st March, 1967, on behalf of the Water Supply and Sewage Disposal Undertaking has not been transferred to the account of the Undertaking as yet. The reason for this short deposit by the General Wing is again their precarious ways and means position. The said amount of Rs. 120 lakhs forms part of the outstanding amount of Rs. 636 lakhs against the General Wing of the Municipal Corporation of Delhi.

3. In order to ensure that the accounts of the two wings of the Corporation (General Wing and the Water Supply and Sewage Disposal Undertaking) remain completely separate, necessary orders were issued by the Commissioner on the 28th March, 1967 (copy enclosed and the procedure given therein is being followed strictly with effect from 1-4-1967. The Water Supply and Sewage Disposal Undertaking have also certified that all the

amounts collected by the General Wing on its behalf have been credited to their account during 1967-68.

4. The Lt. Governor, Delhi, had written to the Commissioner, Delhi Municipal Corporation in May, 1967, instructing *inter alia* that—

“the repayment of loans and interest charges advanced by the Government of India should be the first charge on the revenues of the Undertaking and steps should be taken to say these up.”

In this connection, the Undertaking have pointed that while putting this condition, the huge expenditure on revenue account incurred by them on the salary of staff and the production of water and disposal of sewage had not been taken into account. This is an expenditure which by no means, cannot be postponed even for a single day. However, the Undertaking have assured that they would repay the loans instalments (including interest thereon) after they have received their dues outstanding against the General Wing of the Delhi Municipal Corporation and the New Delhi Municipal Committee. According to the Undertaking, the outstanding amounts against the General Wing of the Municipal Corporation of Delhi and the New Delhi Municipal Committee as on 31st March, 1968, amounted to 636 lakhs and 175 lakhs respectively, whereas the amount of overdue instalments (principal and interest) as on 31st March, 1968, is Rs. 442.72 lakhs.”

The Water Supply and Sewage Disposal Undertaking have already sought confirmation of the amount of Rs. 636 lakhs outstanding against the General Wing of the Delhi Municipal Corporation and the same is awaited. In regard to the sum of Rs. 175 lakhs against the New Delhi Municipal Committee the position is that the New Delhi Municipal Committee had raised a dispute about the quantity of water supplied to them and the cost thereof, as charged by the Delhi Water Supply and Sewage Disposal Undertaking. This dispute is under consideration of the Lt. Governor, Delhi, and his final award about the amount payable by the New Delhi Municipal Committee is expected to be received shortly. The N.D.M.C. has not, however, accepted the outstanding amount of Rs. 175 lakhs as per records of the W.S. & S.D. Undertaking. (Para 4.15)

The accounts of the Water Supply and Sewage Disposal Undertaking are now being maintained separately. The position has also been stated in the note relating to para 4.15.

2. The amounts that are received by the General Wing on account of water tax and scavenging tax are also being credited immediately in the accounts of the Water Supply and Sewage Disposal Undertaking.

3. As regards rendering of full accounts of the loans and grants released by the Government, the Undertaking have stated that the loan cannot be said to be fully accounted for unless the expenditure therefrom is adjusted in the accounts of the Delhi Water Supply and Sewage Disposal Schemes/Works. During the First and the Second Five Year Plans, the works were executed through the agency of the Central Public Works Department and advances for executing those works were paid to them. While the works were completed by the CPWD, the accounts thereof were not generally rendered by them and even upto now a sizable amount of the advances is outstanding against the CPWD. The Chief Engineer, CPWD, has all along been reminded to render the account of all the advances. The Water Supply and Sewage Disposal Undertaking are taking up the matter with the Ministry of

Works, Housing and Supply to expedite the settlement of accounts and refunding the unspent balance out of the advances paid to the CPWD.

4. As already stated in the note relating to para 4.15 the Water supply and Sewage Disposal Undertaking are making all efforts to repay the loan instalments (including interest thereon) but this is contingent on the fact that their dues outstanding against the General Wing of Municipal Corporation of Delhi and the NDMC are received by them. The Government of India have already seriously viewed the defaults in repayments by the Undertaking. This question was last discussed in the Third Meeting of the Committee of Secretaries. It was stated that the Morarka Commission had gone into this question and it would have to be further reviewed after the report was received by the Government. The existing tariff may also have to be re-examined, if necessary.

5. The position regarding recoveries of the overdue instalments as on 31st March, 1968 is as under :

Principal	..	144.89 lakhs
Interest	..	297.83 lakhs
		<hr/>
TOTAL	..	442.72 lakhs
		<hr/>

No payment was made by the Undertaking during the period from 1-3-1965 to 31-3-1968. They have, however, made a payment of Rs. 20 lakhs towards repayment of loan to the Government of India on the 4th April, 1968.

1.19. The Committee regret to note that the amount of overdue instalments of the loan repayable by the Water Supply and Sewage Disposal Undertaking to the Government of India has increased from Rs. 151.53 lakhs (Rs. 53.58 lakhs principal and Rs. 97.95 lakhs interest) as on 31st March, 1966 to Rs. 442.72 lakhs (Rs. 144.89 lakhs principal and Rs. 297.83 lakhs interest) as on 31st March, 1968 (the Undertaking has made a payment of Rs. 20 lakhs towards repayment of loan on 4th April, 1968). The Committee desire that repayment of loans and interest should be the first charge on the Water Supply and Sewage Disposal Undertaking, and they would like Government to ensure that the Water Supply and Sewage Disposal Undertaking honour their commitments in this behalf. According to the Water Supply & Sewage Disposal Undertaking, their outstanding dues against the General Wing of Municipal Corporation of Delhi and New Delhi Municipal Committee as on 31st March, 1968 amounted to Rs. 636 lakhs and Rs. 175 lakhs respectively.

The Committee would also suggest that a suitable long-term arrangement should be evolved so as to ensure that future payments by these local bodies to the Water Supply & Sewage Disposal Undertaking are made in time.

1.20. Another disturbing fact brought to the notice of the Committee is that CPWD who executed the works for the Water Supply and Sewage Disposal Undertaking in the First and Second Five Year Plans have not yet rendered detailed accounts. This is an extremely unsatisfactory state of affairs. The Committee suggest that Government should have the accounts finalised by a target date to be fixed in that behalf.

CHAPTER II
**RECOMMENDATIONS OBSERVATIONS THAT HAVE BEEN AC-
 CEPTED BY GOVERNMENT**

Sl. No.	Para No. of Report	Ministry/ Deptt. concerned	Conclusions/recommendations	Action taken by the Ministry/ Department	Remarks
1	2	3	4	5	6
1.	1-11	Atomic Energy Finance (DEA)	The committee are glad to note that the Ministry of Finance (Deptt. of Economic Affairs) have, at the instance of the Department of Atomic Energy, agreed to make special arrangements under which the foreign exchange requirements of major projects over a period of three and half years will be allocated to the Department, indicating the source and amount of free foreign exchange which could be utilised. To overcome administrative delays at Government level, the Committee have no doubt that the Department of Atomic Energy will make the best use of the organisation recently set up in the Cabinet Secretariat to effect co-ordination between the various Government agencies.		Noted.
	1-12	Do.	The Committee hope that, with the procedure for the allocation of foreign exchange having been streamlined and with the required co-ordination amongst the different Ministries, the Department of Atomic Energy will be able to proceed with the execution of its major projects expeditiously and to complete them on schedule.		Noted.
2.	1.15	Atomic Energy	The Committee note that the percentage of savings in capital outlay has progressively come down from 70 in 1963-64 and about 25 in 1964-65 to 4 in 1965-66. The Committee feel that the budget estimates require to be prepared still more realistically. The Committee suggest that in cases where due to delay in availability of foreign exchange or otherwise, the execution of a project is doubtful in any one year, only a token grant may be taken for it. Further, in other cases where amounts voted by Parliament are not likely to be spent, surrenders should be made in time. Such a step would help Government in assessing the ways and means position.		The suggestions made by the Committee are being implemented by the Department.

Sl. No.	Para No. of Report	Ministry/ Deptt. concerned	Conclusions/recommendations	Action taken by the Ministry/ Department	Remarks
1	2	3	4	5	6
	1.16	Atomic Energy All Ministries/ Deptts.	As the taxation policy of Government largely depends on the budget provisions of the various Departments, the Committee suggest that each Department should exercise closer and stricter control over the technique of budgeting so as to exclude such projects from the budgetary provisions as are not likely to be taken up for execution during the year.	The suggestions made by the Committee are being implemented by the Department.	
[Department of Atomic Energy O.M. No. 24/4/68—Budget dt. 2-1-1969]					

Recommendation

"As the taxation policy of Government largely depends on the budget provisions of the various Departments, the Committee suggest that each Department should exercise closer and stricter control over the technique of budgeting so as to exclude such projects from the budgetary provisions as are not likely to be taken up for execution during the year"

[Recommendation No. 2 (Para No. 1.16) of Appendix VIII to the 21st Report (4th Lok Sabha)]

Action taken

The observations of the Committee have been noted and suitable instructions have been issued to all Ministries/Departments *vide* Ministry of Finance O.M. No. F. 12(18)-E(Coord)/68-I, dated 24-6-1968 (copy enclosed).

[Ministry of Finance (Deptt. of Expenditure) O.M. 12(18)-E.-Coord/68, dated 19-10-68].

No. F. 12(18)-E.(Coord)/68-I

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF EXPENDITURE)

New Delhi, dated the 24th June, 1968.

OFFICE MEMORANDUM

SUBJECT :—21st Report of the P.A.C. (4th Lok Sabha)—Recommendation No. 2 (para 1.16)—Control over the technique of budgeting.

The Public Accounts Committee, while stressing the need for realistic preparation of budget estimates by Govt. Departments, have made the following observations in Para 1.16 of their 21st Report (4th Lok Sabha) :—

"As the taxation policy of Govt. largely depends on the budget provisions of the various Departments, the Committee suggest that each

Department should exercise closer and stricter control over the technique of budgeting so as to exclude such projects from the budgetary provisions as are not likely to be taken up for execution during the year."

Instructions have been issued to the Ministries from time to time emphasizing the need for framing their budget proposals on a realistic basis and for including in the budget only such schemes/proposals as have been worked out in complete detail and have a reasonable prospect of being carried through during that financial year.

In cases where the schemes are not fully worked out at the budget stage and a realistic estimate of the likely expenditure during the year is not found possible, provision for preliminary expenses and immediate minimum requirements if any, need only be included in the budget. Where, however, the likelihood of the schemes being taken up during the year is clearly foreseen, provision can be included in the budget to the extent necessary subject to review later on during the financial year on the basis of progress made in the planning and the sanction of the schemes. No budget provision should, under any circumstances, be made for schemes which are not likely to be taken up for execution during the year.

The Ministry of Home Affairs etc. are requested to note the observations of the P.A.C. for strict compliance and also issue of suitable instructions to all concerned under them.

for Deputy Secretary to the Govt. of India.

To

All Ministries/Deptts. of the Govt. of India.

No. F.12(18)-E(Coord)/68

Copy forwarded to :—

- (1) A. & B. Branch
- (2) Defence Division
- (3) Lok Sabha Secretariat (P.A.C. Branch).

Sd/-

Deputy Secretary to the Govt. of India.

Recommendation

The Committee are unable to appreciate how a former Commissioner in Mauritius, while posted later in Kabul, could communicate a written commitment to the firm in Mauritius to rent the house without the approval of the Government. The Committee feel that it was improper on the part of the former Commissioner to be negotiating a lease of a house which was the affairs of his successor. The Committee note that the view has been impressed upon the officer concerned. The Committee desire that the Ministry of External Affairs should issue clear instructions to the Heads of Missions abroad so that cases of this type do not recur.

[Sr. No. 3 of 21st Report of PAC (Fourth Lok Sabha)]

Action taken

Pursuant to the recommendations of the Committee, circular instructions have been issued in the Ministry's circular No. Q/Prop.1/734/1/68, dated the 4th June, 1968 (Copy enclosed) enjoining upon all Heads of Missions abroad that they or other officials should not entertain any correspondence with their landlords in a manner so as to commit Government in any way without obtaining the specific prior approval of the competent authority, and once they have been posted out of a particular station they should not negotiate a lease of a house etc.; at their previous stations and any pending negotiations on that account at the time of their departure from that station should be left to their successors to deal with.

[Ministry of External Affairs O.M. No. Q(BFII) 7340/1/68, dated the 16-11-1968].

Recommendation

The Committee are glad to note that a sum of Rs. 1,06,000 out of Rs. 1,86,000 on account of arrears of Audit fees has been recovered. The Committee recommend that arrears for the remaining amounts should also be recovered early and that action taken to ensure that recovery of Audit fees for the current period is not allowed to go into arrears. The Committee would like to watch the effect of the measures taken by Government through future Audit Reports. (Serial No. 7—Para 3.32—Appendix VIII).

Action taken

Out of the old arrears of audit fees amounting to Rs. 80,000 a sum of Rs. 34,000 has since been recovered. Action for the recovery of the balance amount of Rs. 46,000 is in progress. Progress of recovery is rather slow as the arrears mostly relate to those societies which have already been taken into liquidation for reasons of their unsatisfactory working.

As regards the recovery of the current dues, the recommendations of the Committee have been noted. Efforts are continuously made to avoid accumulation of current dues.

[Ministry of Food & Agriculture Community Development & Cooperation (Dept. of Cooperation) O.M. No. 6-8/68-UTB&C dt. 5-10-1968]

Recommendation

"It is also observed that a sum of Rs. 17,000 was diverted by the Parishad to the 'Madras study project' from the project on concurrent studies. There were some other financial irregularities. The Committee note that some action has been initiated to get these financial irregularities regularised. They hope that Government will now be able to get the results of the studies entrusted to the All India Panchayat Parishad without further delay. The Committee would also like to be assured that the results of these studies would be put to the use for which they were intended. While the Committee appreciate that difficulties might have been experienced in the recruitment of the right type of staff for undertaking such a research assignment, they feel that such difficulties should have been given proper consideration before entrusting this project to the Parishad. The Committee suggest that before giving grants to non-official organisations, Government should ensure that such organisations have the capability and financial soundness to execute the various projects entrusted to them. In particular, it must be ensured that the organisations have competent staff

to undertake the research projects. In this connection, the Committee would reiterate their observation contained in para 1.109 of their 14th Report (4th Lok Sabha)".

"The Committee also suggest that Government should not release a grant or its instalment to a non-official organisation without making sure that the progress made is commensurate with the grant and that the quality of work is up to the requisite standard. The Committee would like to be informed of the remedial measures taken to avoid the recurrence of such cases."

[S. No. 8 (Para Nos. 3.51 and 3.52) of Appendix VIII to the 21st Report (4th Lok Sabha)]

Action taken

With reference to the general aspect of the above recommendations the position in regard to the existing procedures and financial rules is explained below :—

1. The administrative Ministries are competent to sanction grants-in-aid provided they are in accordance with the rules or principles prescribed with the previous consent of the Finance Ministry. Before releasing the grants, however, the Ministries have to satisfy themselves from the procedural angle, regarding which various instructions have been issued by the Ministry of Finance from time to time. These include the following :—

- (i) Before sanctioning grant-in-aid to private institutions it should be examined that institutions have the experience and the managerial ability to carry out the purpose assigned to them and a machinery is devised to keep an effective and constant check to see that the money is utilised fruitfully and applied to the purposes intended [*vide* G.O.I.'s decision (2) below Rule 149 of G.F.Rs.]
- (ii) The administrative Ministries should obtain the achievement-*cum*-performance reports from the grantee institutions soon after the end of the financial year. The Ministries are also required to undertake atleast once in 3 to 5 years, a review of the performance of the grantee institutions in receipt of grants-in-aid exceeding Rs. 1 lakh per annum. [This position was also brought to the notice of the P.A.C. with reference to the recommendation at S. No. 63(b)(5) in Appendix XLVIII to their 34th Report (3rd Lok Sabha) *vide* Deptt. of Expenditure U.O. No. F.14(42)-E(Coord)/65, dated 16-5-1966].
- (iii) Utilisation Certificates are required to be furnished with reference to the grants released. It should be ensured that such certificates are furnished within a reasonable period after the grants are sanctioned. [This was also brought to the notice of P.A.C. with reference to their recommendation contained in para 5.6 of their 68th Report (3rd Lok Sabha) *vide* Deptt. of Expenditure U.O. No. 12(13)-E(Coord)/67, dated 11-6-1968].
- (iv) The sanctioning authorities are also required to obtain from the grantee institutions, at suitable intervals, such reports, statements etc. in respect of expenditure from the grant, as may be considered necessary, to satisfy themselves that the grants are being properly utilised by the grantees [*vide* Govt. of India's decision 1(a) below Rule 150 of G.F.Rs.].

- (v) The release of further grants to institution etc. which fail to furnish proof of proper utilisation of the earlier grants within reasonable time should be considered only in very exceptional circumstances to be kept on record by the sanctioning authorities, *vide* G.O.I.'s decision 1(d) below Rule 150 of GFRs. [This Govt. of India decision was issued in pursuance of the recommendation contained in para 2 of the 24th Report of the P.A.C. (3rd Lok Sabha) and was also reported to them with reference to their recommendation in para 28 of the 25th Report (3rd Lok Sabha), *vide* Ministry of Finance U.O. No. F. 14(16)-(Coord)/64, dated the 7th June, 1965].

2. It will thus be observed that there are already adequate instructions on the subject, for the guidance of the administrative authorities. Further general instructions do not appear to be necessary. As and when individual cases of lapse or irregularities are brought to light by Audit, it will be for the concerned administrative authorities to submit the necessary explanation and take the required remedial measures internally. In the present case, the position will no doubt be explained to the Committee by the Department of C.D. & C.

[Min. of Fin. O.M. No. F.12(18)-E(Coord)/68, dt. 3-10-1968]

Recommendation

"The Committee are unable to appreciate an expenditure of Rs. 60,000 incurred by the Department of Community Development during the year 1960-61 to 1963-64 for giving grants to four training centres for bringing out journals, which according to the Ministry's own assessment, contained material which was only a third-rate imitation of what was being produced at higher levels."

"The Committee also note that the Journals issued as complimentary copies which were apparently not read represented a large number."

"The Committee consider that had the Department of Community Development carried out a critical assessment of the Journal at the end of 1960-61 instead of 1963-64 it should have been possible to save expenditure on grants for at least 3 years.

[S. No. 9 (Para 3.57) of Appendix VIII to the 21st Report (4th Lok Sabha)]

"The Committee also note from the information supplied by the Ministry that out of 1,47,232 copies of the Journal "Kurukshetra" (English) as many as 1,25,002 (85 per cent) are issued on a complimentary basis. Similarly, for the Journal, "Kurukshetra" (Hindi), out of 66,884 copies printed annually, 53,770 (80.6 per cent) are issued on a complimentary basis. In the case of the Journal "Panchayati Raj" (English) out of 1,19,711 copies, 1,05,282 (87.6 per cent) are issued on complimentary basis. It is, therefore, no wonder that Government are incurring an annual loss of Rs. 1,47,240 on the publication of these journals. The Committee suggest that the question of discontinuing these journals or at least reducing drastically the size and number of copies of these journals may be examined without delay in consultation with the Ministry of Finance".

"The Committee suggest that a similar review of all other publications brought out by the Ministry may be undertaken so as to effect maximum economy consistent with requirements."

[S. No. 10 (Paras 3.62 and 3.63) of Appendix VIII to the 21st Report (4th Lok Sabha)]

Action taken

In regard to the publications with which the Department of Community Development is concerned, a suitable reply will be submitted to the Committee by that Department.

The general observations of the Committee have however been noted and instructions issued to all Ministries, Departments requiring them to take necessary action to review all journals, periodicals, etc. brought out by them from the points of their utility and economy in the cost of their production and the actual number required with due regard to the objectives in view for which these are being produced [*vide* Ministry of Finance O.M. No. F. 12(18)-F(Coord)/68-II, dated 27-6-1968 (Copy enclosed)].

Recommendation

"The Committee feel that effective measures should be taken to ensure that the State is not put to any loss due to inexact or wrong specification, type or description of the surplus stores by Government Departments concerned. The Committee would like to be informed of the remedial measures taken to avoid a recurrence of such cases.

[S. No. 13 (Para No. 5.15) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

Necessary instructions have been issued to the Ministries by the Directorate General of Supplies and Disposals and a suitable note duly vetted by audit has been furnished to the Committee by the Department of Supply *vide* their O.M. to Lok Sabha Secretariat No. 5/6/66-Dis.ES.II dated 22nd August, 1968.

Ministry of Finance (Department of Expenditure) O.M. No. 12(18)-E(Coord)/68 dt. 19-10-68]

No. F. 12(18)-E(Coord)/68-II

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF EXPENDITURE)

New Delhi, the 27th June, 1968.

OFFICE MEMORANDUM

SUBJECT :—21st Report of P.A.C. (Fourth Lok Sabha).

The undersigned is directed to forward herewith extracts of recommendations of the P.A.C. contained at S. Nos. 9, 10 and 15 of Appendix VIII to the 21st Report for information and guidance.

2. In the recommendations at S. Nos. 9 and 10, the Committee have made certain observations with reference to a case of expenditure incurred by the Deptt. of Community Development and Cooperation on publication of certain journals which were not properly planned. The Committee have also suggested a review of all other publications by that Department so as to effect maximum economy consistent with requirements. It is requested that the observations of the Committee may be taken due note of by all other Ministries/Deptts. also. They may also take necessary action to review all journals, periodicals and publicity literature etc. brought out by them from the points of their utility and economy in the cost of their production and the actual number required with due regard to the objectives in view for which these are being produced.

3. The Ministry of Commerce, etc. may also note the Committee's observation reiterated in S. No. 15 regarding the need for recording orders in clear and unambiguous terms. Attention in this connection is also invited to the Ministry of Home Affairs O.M. No. 14/6/67-Ests.(A), dated the 22nd September, 1967.

Deputy Secretary to the Govt. of India.

To

All Ministries/Deptts. of Govt. of India.

No. F. 12(18)-E.(Coord)/68-II

Copy forwarded for information to:—

- (i) Deptt. of Community Development & Cooperation;
- (ii) Lok Sabha Sectt. (P.A.C. Branch);
- (iii) E.II(A) Branch.

Deputy Secretary to the Govt. of India

Extracts of Recommendation of the P.A.C. contained at S.Nos. 9, 10 and 15 of Appendix VIII. to the 21st Report.

S.No.	Para No of the Report	Conclusions/Recommendations
(1)	(2)	(3)
9	3.57	<p>The committee are unable to appreciate an expenditure of Rs. 60,000 incurred by the Department of Community Development during the years 1960-61 to 1963-64 for giving grants to four training centres for bringing out journals, which according to the Ministry's own assessment, contained material which was only "a third-rate imitation of what was being produced at higher levels."</p> <p>The Committee also note that the Journals issued "as complimentary copies which were apparently not read represented a large number."</p> <p>The Committee consider that had the Department of Community Development carried out a critical assessment of the Journal at the end of 1960-61 instead of 1963-64, it should have been possible to save expenditure on grants for at least three years.</p>
10	3.62	<p>The Committee also note from the information supplied by the Ministry that out of 1,47,232 copies of the Journal "Kurukshetra" (English) as many as 1,25,002 (85 per cent) are issued on a complimentary basis. Similarly, for the Journal, "Kurukshetra" (Hindi), out of 66,884 copies printed annually, 53,770 (80.6 per cent) are issued on a complimentary basis. In the case of the Journal "Panchayati Raj" (English), out of 1,19,711 copies, 1,05,282 (87.5 per cent) are issued on a complimentary basis. It is, therefore, no wonder that Government are incurring an annual loss of Rs.1,47,240 on the publication of these journals. The</p>

(1)	(2)	(3)
.		Committee suggest that the question of discontinuing these journals or at least reducing drastically the size and number of copies of these journals may be examined without delay in consultation with the Ministry of Finance.
	3,63	The Committee suggest that a similar review of all other publications brought out by the Ministry may be undertaken so as to effect maximum economy consistent with requirements.
15	5,42	The Committee expect that officers would record their orders in clear and unambiguous terms. They hope that, with the issue of instructions by the Ministry of Home Affairs, such cases will not recur.

Recommendation

"The Committee understand that a Commission is at present looking into the unsatisfactory state of finances of the Delhi Municipal Corporation. The Committee have no doubt that, based on the findings of this Commission, Government will take adequate measures to put the state of finances of the Delhi Municipal Corporation on a sound footing."

[Serial No. 12 Appendix VIII of the Twenty-First Report Fourth Lok Sabha) of the P.A.C. (1967-68)].

Para No. of Report 4.18.

Action taken

The requirements have been noted and the Ministry of Home Affairs will be requested to take necessary action at the appropriate time. In this connection, para 4 of the note relating to para 4.17 of Serial No. 12 may kindly be seen.

[Ministry of Health, Family Planning & U.D. (Deptt. of Health) D.O. Letter No. F-16-14/68-PHE dt. 1-2-1969]

Recommendation

The Committee feel that effective measures should be taken to ensure that the State is not put to any loss due to inexact or wrong specification, type or description of the surplus stores by Government departments concerned. The Committee would like to be informed of the remedial measures taken to avoid a recurrence of such cases.

[Sl. No. 13 (Para 5.15) of Appendix VIII of the 21st Report (4th Lok Sabha)].

Action taken

The importance of giving a correct description of the stores in the Surplus Reports had been brought to the notice of all concerned in D.G.S. & D. O.M. No. DGS & D/4 (Con.117)/CDI dated 17-1-55 (copy enclosed). The recommendation of the Committee has also been brought to the notice of all Ministries/Departments of the Government of India requesting them to impress upon the stockholding authorities the necessity and importance of giving correct descriptions in the Surplus Report. A copy of the Circular letter No. D.G.S. & D/139(1)/65-CDN-4 dated 3-5-68 issued in this connection is enclosed; (Annexure I).

Recommendation

The Committee are also not happy to note that Directorate General, Supplies and Disposals, took about a year to invite tenders for the sale and removal of Stores.

declared surplus by Naval Headquarters. They hope that the Directorate General, Supplies and Disposals will take immediate steps to dispose of stores entrusted to them without the kind of delay that happened in the present case.

[Sl. No. 13 (Para 5.16) of Appendix VIII of the 21st Report (4th Lok Sabha)].

Action taken

With a view to quickening the pace of clearance of surplus stores, an inter-departmental meeting was held in September, 1965 to consider if it was possible to curtail the time taken at various stages of the disposal of surplus stores. In accordance with the time-schedule as fixed at that meeting, the maximum time between the receipt of a surplus report and disposal/removal of the stores was reduced to 3-4½ months from 5-8 months taken previously. A copy of the minutes of the meeting and the time schedule laid down are enclosed (Annexure II).

The recommendation made by the Committee has also been brought to the notice of the Directors of Disposals at the Headquarters office of the Dte. G.S. & D. and the regional offices and they have been asked to ensure that all possible steps are taken for the expeditious disposal of stores declared to D.G.S.&D. and to adhere strictly to the revised time-schedule. A copy of Circular No. DGS&D/139(1)/65/CDN-4 dated 3-5-68 is enclosed (Annexure III).

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M. No. 5/6/66 Dis-ESII dt. 22-8-68]

ANNEXURE - I

No. DGS&D/139(1)/65-CDN-4

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS

N. I. Building, Parliament Street, New Delhi-1.

Dated 3-5-68

SUBJECT :—Declaration of surplus stores—correct description of stores.

An extract from the Recommendations of the P.A.C. relating to Para 80 of the Audit Report (Civil), 1967 regarding irregularities in the disposal of surplus stores is given below :—

“5.15.—The Committee feel that effective measures should be taken to ensure that the State is not put to any loss due to inexact or wrong specifications, type or description of the surplus stores by the Govt. Deptts. concerned. The Committee would like to be informed of the remedial measures taken to avoid a recurrence of such cases”.

In this connection attention is invited to this Office Memo. No. DGS&D/4(Con. 117)/CDI dated 17th January, 1955 wherein the necessity and importance of giving correct description of stores in the surplus report

at the time of declaring stores to the DGS&D for disposal was impressed and the declaring authorities were requested to extend their co-operation in the matter of giving description of stores as accurately as possible. A copy of the aforesaid O.M. is enclosed for ready reference. It may be re-iterated that while sales are effected on 'as is where is' basis yet it is advisable that our indication about description, number, weights, condition etc. should carry some weight with the buyers, otherwise heavy discounting by buyers on these accounts is inevitable and our realisations will go down as the speculative element in the bargain becomes more pronounced.

The Ministry of Defence etc. are again requested to impress upon the stockholding authorities the necessity and importance of giving correct description in the surplus report. A copy of the instructions issued in this regard may be forwarded to this office for information.

Deputy Director General (Supplies & Disposals).

To

All Ministries/Deptt. of Govt. of India.

Copy to CDN-5 Section for information.

No. DGS & D/4(Con. 117)/CD.1

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
DISPOSALS WING, CO-ORDINATION BRANCH

New Delhi, the 17th January, 1955.

OFFICE MEMORANDUM

SUBJECT :—Declaration of surplus stores—correct description of stores.

It has been noticed that description of stores given in a number of surplus reports is not only meagre but also inaccurate. Even though the stores are generally inspected before sales are organised, yet the nomenclature of the stores in the advertisements as well as in the subsequent sale documents is reproduced exactly in the manner in which it is stated in the surplus declarations so as to avoid confusion at the Stockholder's end. It is realised that the nomenclature given to stores is more or less based on the technical terminology and usage of the various departments and cannot conform to the normal civil trade usage and practices. As a Sales Organisation, it is imperative that this department should give complete and correct description of the stores in the tender notices, auction notices and all other sale documents. It will, therefore, be appreciated if Ministry of Defence etc. would impress upon the Stockholding authorities the necessity and importance of giving correct description in the surplus report at the time of declaring stores to this Directorate General for disposal and also issue instructions to ensure that the surplus report forms are filled in properly and strictly in accordance with the instructions given on the back of the form (a copy is enclosed). The description of the stores should be indicated therein as accurately as possible.

Difficulties have, at times, arisen, at this end with buyers owing to inaccuracies in descriptions, numbers, weights and condition. While sales are effected on "as is" basis, yet it is advisable that our indication about descriptions, numbers, weights, condition etc. should carry some weight with buyers, otherwise heavy discounting by buyers on these account is inevitable

and our realisations will go down as the speculative element in the bargain becomes more pronounced. It is, therefore, good policy to be as accurate as possible on these points and on this Director General of Supplies and Disposals looks forward to the co-operation of declaring authorities.

A copy of the instructions issued by the Ministry of Defence etc. may please be endorsed to this Directorate General for information.

*Deputy Director General of Supplies &
Disposals*

Revised Standard Distribution.

ANNEXURE II

Record Note of meeting held on 10th September, 1965 in the room of Shri N. R. Bansod, Joint Secretary, Department of Supply, NEW DELHI

SUBJECT :—Possibility of reducing the time taken at various stages in the disposal of surplus stores : Reference—Department of Supply's Memo. No. 16/3/63-Dis-ESII.

With reference to the above a meeting was held in the room of the Joint Secretary, Department of Supply on 9-10-1965 under the Chairmanship of Shri N. R. Bansod, Joint Secretary, Department of Supply. The following were present :

- | | |
|-----------------------------|---|
| 1. Shri N. R. Bansod | Joint Secretary,
Deptt. of Supply. |
| 2. Shri B. D. Kumar | Deputy Secretary,
Deptt. of Supply. |
| 3. Shri J. S. Mathur | Additional D.G. (S&D). |
| 4. Shri I. N. Khanna | Deputy D.G. (S&D). |
| 5. Shri B. Sengupta | Director of Disposals |
| 6. Shri R. K. A. Subramanya | Deputy Financial
Advisor (Supply). |
| 7. Lt. Col. A. C. Gupta | Chief Liaison Officer
(Defence/Disposal) |

1. The question of disposal of stores by auction at various places during this Emergency was discussed. It was decided that, at present, no auction should be held in the Punjab area, and wherever the stockholders had initiated action to postpone auctions they should be accepted.

2. The question of reducing the time at present taken at various stages as brought out in the brief for the meeting was discussed in detail, and finally the schedule under column (e) of annexure attached was agreed to. Every effort should be made to adhere to these timings in future by the Disposals Directorate at Headquarters and the Regional Offices.

3. Time allowed for removal of the stores as per Serial No. 17 & 23 of the annexure under Column (e) has been restricted to 12 to 17 days. The purchaser should initially be allowed 12 working days for removal of the stores and on further application, if any, should be allowed 6 working days.

more without charging any ground rent. Ground rent will be charged only if the stores are not removed after the expiry of 18 working days.

4. In order to out delays at various stages it was also decided that the mode of disposal should be decided by the Screening Board which should meet twice a week under the Chairmanship of the Director of Disposals.

5. Now that 3 Field Officers are available and that the Screening Board would meet twice a week it should be possible to cut out lot of routine inspection by these Field Officers.

6. Deputy Financial Adviser desired to know the total amount of expenditure incurred towards the T.A. and D.A. for inspection at Madras and Bombay regions for one year in order to consider whether an additional post of Field Officer can be sanctioned for posting in these regions.

Sd/-

Director of Disposals

Annexure Attached.

Time Schedule indicating Time taken at Various Stages in the Disposal of Surplus Stores.

Sl. No.	Details of work involved	Time proposed by DGS&D (working days)	Time suggested by CLO (Disposals) (working days)	Time finally approved after discussion	Time saved (working days)
1	2	3	4	5	6
1.	Receipt of Surplus Report and scrutiny thereof by CR Sec. of Disposals Dte ..	6	2	3	3
2.	Scrutiny of SR by Screening Board ..	6	3	4	2
3.	Registration of and transfer of SRs to Hq. Commodity Sec/Regional offices ..	4	2	2	2
		16	7	9	7
4.	Inspection of stores by Field Officers & submission of inspection report	40	18	20	20
5.	Fixation of guiding price/reserve price on the basis of AMV indicated	10	6	6	4
		50	24	26	24
6.	Issue of notice to priority indentors where stores may be of interest to them ..	12	6	10	2
7.	Time allowed to PIs for submission of indents	26	26	30	+4
8.	Time required for allocation to PIs issue of Transfer order/Sale letter	18	6	10	8
9.	Time allowed to PIs for payment of Sale Values (payment Indentors)	18	18	18	---
10.	Time allowed to PIs for removal of stores	26	18	26	---
11.	Transfer of residual items, after meeting demands for PIs to Auction Cell	9	4	4	5
		109	78	98	11

1	2	3	4	5	6
12. Preparation of Tender Sets/tender notice where sale is to be by tender		6	6	6	—
13. Time required for publication of tender notice and submission of tender		30	18	30	—
14. Tender decision and issue of sale letter ..		6	6	12	+ 6
15. Time allowed to deposit sale value ..		22	18	12	10
16. Issue of sale release order on receipt of sale value		6	6	6	—
17. Time allowed for removal of stores ..		22	18	12-18	10-4
		92	72	78-84	14-8
18. Fixation of auction programme after receipt of XM		18	12	12	6
19. Issue of sale list to stockholder/auctioneers		9	6	6	3
20. Publicity of Auction Notice		18	18	18	—
21. Time allowed for payment of balance sale value		6	6	6	—
22. Time taken in issue of sale release order		6	6	6	—
23. Time allowed for removal of stores ..		22	18	12-18	10-4
		79	66	60-66	19-13

ANNEXURE III

No. DGS&D/139(1)/65/CDN-4

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS

N. I. Building, Parliament Street, New Delhi-1

Dated 3-5-1968.

SUBJECT :—*Disposal of Surplus Stores declared to DGS&D.*

An extract from the recommendations of the P.A.C. relating to Para 80 of the Audit Report (Civil), 1967 regarding irregularities in the disposal of surplus stores is given below :

"5.16—The Committee are also not very happy to note that the DGS&D took about a year to invite tenders for the sale and removal of stores declared surplus by Naval Headquarters. They hope that the DGS&D will take immediate steps to dispose of stores entrusted to them without the kind of delay that happened in the present case".

In this connection attention of the Director of Disposals at Headquarters and DS&Ds in the Regional Offices is invited to this office memo. No. DGS&D/139/(Misc)CDN/65 dated 25-1-1966 under which a copy of the Record Note of the meeting held on 10-9-1965 to discuss the possibility of reducing the time taken at various stages in the disposal of surplus stores

from the time of receipt of the surplus reports till final removal of the stores was forwarded to them and they were requested to strictly adhere to the revised timings decided in the said meeting.

The Director of Disposals at Headquarters and the DS&Ds in the Regional Offices are again requested to ensure that all possible steps are taken for expeditious disposal of the stores declared to DGS&D and the revised time-schedule referred to above is strictly adhered to with a view to avoid any criticism regarding delay in disposal of the stores on the part of DGS&D.

Please acknowledge receipt.

Deputy Director (CS-1)

To

Director of Disposals at Hqrs.

DS&D, Bombay/Calcutta/Madras/Kanpur.

Copy to Section CDN-5 for information.

Recommendation

The Committee regret to note that Government had to incur extra expenditure of Rs. 2.62 lakhs in this case because of the failure of the Purchase Organisation to follow the correct procedure in regard to the communication of the acceptance of the offer by the competent authority and to issue formal acceptance of the tender in writing before the expiry of the time up to which the firm's offer was valid. The Committee feel that the work relating to the communication of the acceptance of the firm's offer should not have been entrusted to a Junior Field Officer who was not authorised to undertake it.

[Sl. No. 14 Para 5.30 of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

Internal instructions have been issued to the Director of Supplies and Disposals, Calcutta on 19-5-1967 to ensure that telephonic acceptances should be communicated only by a Purchase Officer and he should record a note, in writing, on the note portion of the file about his having done so to the concerned firms giving the telephone Nos., the names of the persons to whom talked and the quantity/price for which commitment is entered into. Advance Acceptances on a standard form are then posted under a Certificate of Posting, duly getting the time of posting also certified by the postal authorities.

Recommendation

The Committee suggest that the Department may examine in consultation with the Ministry of Law whether the revised instructions issued by them and the present procedure are satisfactory and whether they provide a legally acceptable basis for entering into contracts for the supply of stores.

[Sl. No. 14 (Para 5.31) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

In order to remove the lacuna in telephonic acceptance of tenders relating to Jute Purchases in becoming concluded contracts in the eyes of Law, the following procedure has now been adopted :—

- (a) The tenders are opened at 11.00 A.M. instead of at 11.30 A.M. as was done previously.
- (b) Tenderers are requested to keep the offers open for the purpose of communicating a formal acceptance in writing upto 6.00 P.M. every day. They are at liberty to stipulate a condition that acceptance may be communicated to them on telephone Nos. by 2.00 P.M. and that the advance acceptance of Tender would be collected from the Purchase Organisation by their accredited representatives by 5.00 P.M. on the same date. If the representative fails to collect the advance A/T by 5.00 P.M. the same will be issued to them under Certificate of Posting by 6.00 P.M. on the same date.
- (c) Tenderers not abiding by the conditions given above are liable to be ignored.

2. The Director of Supplies and Disposals, Calcutta has confirmed that he is experiencing no difficulty in the application of the new system of opening the tenders at 11.00 A.M. and keeping the same open for acceptance till 6.00 P.M. He has also confirmed that it has been possible to post the advance A/Ts by 6.00 P.M. every day and the postal authorities are also indicating the time on the certificates of posting issued by them.

3. As desired by the Committee, the Law Ministry were requested to confirm whether the new procedure adopted is legally acceptable basis for entering into contracts. The Ministry of Law have advised that the only snag in the procedure adopted is that it would be legally quite competent for a firm to whom acceptance has been communicated on the telephone to revoke their offer at any time before advance acceptance letter is posted.

4. The snag pointed out by the Law Ministry is unavoidable as tenderers are free in all cases to revoke their offers before communication of acceptance is posted.

However, the DGS&D., Calcutta has been instructed on 14-11-1968 that in future, after communicating the acceptance over the phone to the supplier, the Purchase Officer should post one copy of the Advance Acceptance of Tender as soon as it is ready before or after 2.00 P.M. instead of waiting upto 6.00 P.M. irrespective of the fact that the supplier might have intimated over the phone that the acceptance would be collected by his accredited representative. In such cases, when the supplier's representative calls on the DS&D., Calcutta, he could be furnished with a duplicate copy of the Advance Acceptance of Tender even though it might have already been despatched. Where, however, the representative calls on the DS&D before the despatch of the Advance Acceptance of Tender, the same could be handed over to him and formal acceptance of tender issued subsequently.

NEW DELHI;

the 9th December, 1968.

[Ministry of Works, Housing & Supply O.M. No. F.No. 43/43/66-PI.]

Recommendation

The Committee expect that officers would record their orders in clear and unambiguous terms. They hope that, with the issue of instructions by the Ministry of Home Affairs, such cases will not recur.

[S. No. 15 (Para No. 5.42) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

The observations of the Committee have been noted and suitable instructions have been issued to all Ministries/Departments *vide* Ministry of Finance O.M. No. F. 12 (18)-E(Coord)/68-II, dated 27-6-1968.

[Min. of Fin. O.M. No. F. 12(18)-E(Coord)/68, dated 19-10-1968].

No. F. 12(18)-E(Coord)/68-II

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF EXPENDITURE)

New Delhi, the 27th June 1968.

OFFICE MEMORANDUM

SUBJECT : 21st Report of P.A.C. (Fourth Lok Sabha).

The undersigned is directed to forward herewith extracts of recommendations of the P.A.C. contained at S. Nos. 9, 10 and 15 of Appendix VIII to the 21st Report for information and guidance.

2. In the recommendations at S. Nos. 9 and 10, the Committee have made certain observations with reference to a case of expenditure incurred by the Deptt. of Community Development and Cooperation on publication of certain journals which were not properly planned. The Committee have also suggested a review of all other publications by that Department so as to effect maximum economy consistent with requirements. It is requested that the observations of the Committee may be taken due note of by all other Ministries/Deptts. also. They may also take necessary action to review all journals, periodicals and publicity literature etc. brought out by them from the points of their utility and economy in the cost of their production and the actual number required with due regard to the objectives in view for which these are being produced.

3. The Ministry of Commerce, etc. may also note the Committee's observation reiterated in s. No. 15 regarding the need for recording orders in clear and unambiguous terms. Attention in this connection is also invited to the Ministry of Home Affairs O.M. No. 14/6/67-Ests (A), dated the 22nd September, 1967.

(J. R. SAHA),

Deputy Secretary to the Govt. of India.

To

All Ministries/Deptts. of Govt. of India.

No. F. 12(18)-E(Coord)/68-II

Copy forwarded for information to :—

- (i) Deptt. of Community Development & Cooperation;
- (ii) Lok Sabha Sectt. (P.A.C. Branch);
- (iii) E. II(A) Branch.

(J. R. SAHA),

Deputy Secretary to the Govt. of India.

No. F. 12(18)-E(Coord)/68-I

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF EXPENDITURE)

New Delhi, the 24th June, 1968

OFFICE MEMORANDUM

SUBJECT : *21st Report of the P.A.C. (4th Lok Sabha)—Recommendation No. 2 (Para 1.16)—Control over the technique of budgeting.*

The Public Accounts Committee, while stressing the need for realistic preparation of budget estimates by Government Departments, have made the following observations in Para 1.16 of their 21st Report (4th Lok Sabha) :—

“As the taxation policy of Government largely depends on the budget provisions of the various Departments, the Committee suggest that each Department should exercise closer and stricter control over the technique of budgeting so as to exclude such projects from the budgetary provisions as are not likely to be taken up for execution during the year.”

Instructions have been issued to the Ministries from time to time emphasizing the need for framing their budget proposals on a realistic basis and for including in the budget only such schemes/proposals as have been worked out in complete detail and have a reasonable prospect of being carried through during that financial year.

In cases where the schemes are not fully worked out at the budget stage and a realistic estimate of the likely expenditure during the year is not found possible, provision for preliminary expenses and immediate minimum requirements if any, need only be included in the budget. Where, however, the likelihood of the schemes being taken up during the year is clearly foreseen, provision can be included in the budget to the extent necessary subject to review later on during the financial year on the basis of progress made in the planning and the sanction of the schemes. No budget provision should, under any circumstances, be made for schemes which are not likely to be taken up for execution during the year.

The Ministry of Home Affairs etc. are requested to note the observations of the P.A.C. for strict compliance and also issue of suitable instructions to all concerned under them.

Deputy Secretary to the Govt. of India.

To

All Ministries/Depts. of the Govt. of India.

No. F. 12(18)-E(Coord)/68

Copy forwarded to :—

- (1) A & B Branch.
- (2) Defence Division.
- (3) Lok Sabha Secretariat (P.A.C. Branch).

Sd./

Deputy Secretary to the Govt. of India.

Extracts of Recommendation of the P.A.C. contained at S. Nos. 9, 10 and 15 of Appendix VIII, to the 21st Report.

S. No.	Para No. of the Report	Conclusions/Recommendations
(1)	(2)	(3)
9	3.57	<p>The Committee are unable to appreciate an expenditure of Rs. 60,000 incurred by the Department of Community Development during the years 1960-61 to 1963-64 for giving grants to four training centres for bringing out journals, which according to the Ministry's own assessment, contained material which was only "a third-rate imitation of what was being produced at higher levels."</p> <p>The Committee also note that the Journals issued "as complimentary copies which were apparently not read represented a large number."</p> <p>The Committee consider that had the Department of Community Development carried out a critical assessment of the Journal at the end of 1960-61 instead of 1963-64, it should have been possible to save expenditure on grants for at least three years.</p>
10	3.62	<p>The Committee also note from the information supplied by the Ministry that out of 1,47,232 copies of the Journal "Kurukshetra" (English) as many as 1,25,002 (85 per cent) are issued on a complimentary basis. Similarly, for the Journal, "Kurukshetra" (Hindi), out of 66,884 copies printed annually, 53,770 (80.6 per cent) are issued on a complimentary basis. In the case of the Journal "Panchayat Raj" (English), out of 1,19,711 copies, 1,05,282 (87.5 per cent) are issued on a complimentary basis. It is therefore, no wonder that Government are incurring an annual loss of Rs.1,47,240 on the publication of these journals. The Committee suggest that the question of discontinuing these journals or at least reducing drastically the size and number of copies of these journals may be examined without delay in consultation with the Ministry of Finance.</p>
	3.63	<p>The Committee suggest that a similar review of all other publications brought out by the Ministry may be undertaken so as to effect maximum economy consistent with requirements.</p>
15	5.42	<p>The Committee expect that officers would record their orders in clear and unambiguous terms. They hope that, with the issue of instructions by the Ministry of Home Affairs, such cases will not recur.</p>

Recommendation

The Committee note that the Department of Supply are taking action against the officers who had inadvertently left out certain details from the Defence specifications while calling for the stand by tender. The Committee would like to be informed of the action taken in this case as also the measures taken to avoid such lapses in future.

[Sl. No. 17 (Para 5.65) of Appendix VIII to 21st Report (4th Lok Sabha)].

Action taken

The Assistant Director of Supplies concerned, who failed to ensure that the specification as given in the Stand by Tender Enquiry was exactly the same as given in the earlier Acceptance of Tender, has been warned to be more careful in future.

As regards remedial measures, comprehensive instructions regarding risk purchase have been issued in Office Order No. 11 dated 25-1-1968 (copy enclosed). Para 4(b) of the Office Order lay down that the risk purchase contract should be on the same terms (apart from the delivery time) as the original contract *i.e.*, the goods should be of the same specification and liable to inspection by the same authority and the terms of payment as also the provision regarding liquidated damages, arbitration etc. should be the same. These instructions are considered adequate for the purpose.

Recommendation

The Committee note that the Director General, Supplies and Disposals, could not take advantage of the lower rate because the Defence Inspector had kept the contract alive by his action. The Committee understand from Audit that this was an operational/urgent indent and according to the provisions of para 228 of the Director General, Supplies and Disposals' Manual, the Inspectors are not permitted to allow the normal grace period of 21 days in such contracts. The Committee, therefore, fail to understand why the Defence Inspector kept the contract alive and how the Director General, Supplies and Disposals permitted the extension of the contract when it was an operational/urgent indent. The Committee would, therefore, like the Department to investigate the matter further with a view to fix responsibility for these lapses.

[Sl. No. 17(Para 5.66) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

The disciplinary aspect of the case has been examined. The following action has been taken :

- (1) For recommending grant of extensions in the delivery period in the contracts, despite the lower trend in price revealed in the tenders received in response to stand-by tender enquiries, the penalty of withholding of one increment without cumulative effect has been imposed on the Assistant Director of Supplies concerned on 12-1-1968.
- (2) For his failure to consider the downward trend in prices as quoted in a stand-by tender enquiry and agreeing to extend delivery period against the A/T on original terms and conditions instead of cancelling the A/T and effecting repurchase at

lower price, the Deputy Director of Supplies, has been administered a warning on 12-1-1968. A copy of the warning has been placed in his C/R dossier.

Recommendation

The Committee desire that procedural lacuna is not communicating the rates received in stand-by tenders to the Inspectors should be removed so that cases of this type involving extra expenditure in the purchase of stores do not recur.

[Sl. No. 17 (Para 5.67) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

Para 8 of Office Order No. 10 dated 25-1-1968 (copy enclosed) (Comprehensive instructions regarding delivery period in contracts) lays down that in cases where delivery dates have expired, and the price of the material has also gone down, the Purchase Officers should take quick and timely action by addressing telegraphically the Inspectorate concerned not to inspect the stores tendered after the expiry of the delivery date, while the question of repurchase at cheaper rates after cancellation of the original contract is under consideration. These instructions are considered adequate for the purpose.

O.M. No. 43(15)/66-PI Ministry of Works, Housing & Supply (Deptt. of Supply), dated the 24th August, 1968

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
SECTION CDN-II
NEW DELHI.

OFFICE ORDER NO. 11

Dated 25-1-1968

SUBJECT :—*Risk Purchase—Comprehensive Instructions reg.*

All current existing instructions on the above subject have been consolidated up-to-date and are reproduced below for guidance of all concerned.

1. According to clause 14(7) of the General Conditions of Contract as contained in Form No. DGS & D-68 (Revised) if the contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made, in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract.

2. Responsibility of the purchase officers to arrange risk purchase within the specified time limit.

It is the responsibility of the purchase officers to ensure that risk purchase is effected within the time limit as specified above. Any loss that may occur on account of the delay on the part of the purchase officer to effect risk purchase within the specified time limit will render him liable to disciplinary action as also for recovery of the loss so sustained on account of his negligence/default. Even though six months' time is provided, every endeavour should be made to effect repurchase within the shortest possible time without waiting for the completion of the six months period. This will save a lot of legal complications.

[Also see para 5(c)].

NOTE : Repurchase within six months as indicated in para 1 above is enforceable only in cases where the default is on account of the contractor's failure to adhere to the contract delivery period or repudiation of contract before expiry of such period. In cases, however, where the contract is cancelled for reasons other than non-adherence of the contract delivery period or repudiation of the contract, repurchase should be effected immediately within a reasonable time.

(Para 239 of DGS&D Manual).

(c) When suppliers account their failure to supply the stores to non-availability of wagons on account of booking restrictions, the factual position should be ascertained from the Railway concerned and the Ministry of Law consulted before resorting to cancellation at the risk and cost of the contractor.

Ministry of Law should be consulted in all cases where there are doubts about our right to cancel the contract.

(f) In cases where security deposit is called for by a specified date, default in furnishing the same by the target date is in itself a breach of the contract which entitles the Government to cancel the contract at the risk and cost of the contractor.

(Para 49 of the Contract Manual).

4. Measures to be taken to effect risk purchase.

(a) As soon as a contract is cancelled steps should be taken to effect repurchase if the stores are still needed.

(i) *Standby tenders* : The buyer's right to effect repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the purchase officer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however where stores are most urgently required by the indentors and are not available from ready stock but have to be manufactured and some public harm would be caused by delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract. Issue of such standby tenders should, however, be restricted to cases of purchase of special class or kind of stores which are not readily available in the market and whose price is more or less stable over comparatively long periods of time.

In other words standby tenders which are opened not longer than a month before the date of breach can be accepted. On the other hand, in case of stores whose price is liable to fluctuate from day to day, it will not be advisable to accept standby tenders opened a long time before the date of breach. If at all it is found necessary in the public interest to accept a standby tender in such cases, such a tender should be the one opened only a few days before the date of breach. In any case it should be borne in mind that the cancellation of the contract on the defaulting supplier should precede the acceptance of the standby tender.

NOTE : Contracts placed against operational, critical and other important Defence requirements where stores are to be manufactured according to Defence specification/drawing and some public harm would be caused by delays in supplies, should be considered as cases which would justify the invitation of standby tenders prior to the date of breach.

(ii) In cases other than those mentioned above, if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Department of Supply should be obtained since placement of order on the basis of standby tender would prejudice to the right of the Government to recover extra expenditure incurred in risk purchase.

[Please also see 'Note under para 4(b) below].

(O.O. No. 112 dated 5-10-1967).

4(b) *Risk purchase to be on identical terms as the original contract.*

Risk purchase contract should be on the same terms (apart from the delivery time) as the original contract *i.e.* the goods should be of the same specification and liable to inspection by the same authority and the terms of payment, provision regarding liquidated damages, arbitration etc. should be the same where the original A/T provides for submission of a sample by the firm for testing prior to bulk supply, a similar condition should also be incorporated in the risk purchase contract. The intention is that the terms of the new contract should not be more onerous or more liberal than those of the original contract except to the extent of the time of supply *i.e.* much shorter time for supply of the stores would be permissible under the law, provided of course a reasonable time is given. If in exceptional circumstances it is necessary to depart from this rule, alternative quotation should be invited, one according to the terms of the original contract and the other according to revised requirements, the damages claimable being calculated on the basis of the legal advice obtained in each case.

It may also be added that even if the first purchase has been effected by negotiation or as a result of limited tender enquiry, the risk purchase contract should as far as practicable, be effected by advertised tender. This saves a lot of objections and is likely to help the Government in recovering the extra cost incurred. There is, however, no objection to effect repurchase by a limited tender enquiry since according to the conditions of contract the manner and method of such purchase will be in the entire discretion of the Secretary. It should, however, be borne in mind that the enquiry should not exclude any known suppliers.

NOTE : Whenever risk purchase is effected either on the basis of the standby tenders or on the basis of negotiation, the Ministry of Law should be consulted regarding Government's right to recover the extra expenditure incurred in risk purchase. If the extra expenditure incurred is not legally recoverable, claim should be made for recovery of general damages. The rate established by the standby tenders may be taken as the market rate on the date of breach for the purpose of claiming the general damages provided the standby tenders are opened on the date of breach. Care should, therefore, be taken in fixing the date of opening of standby tenders so that it synchronises with the likely date of breach in respect of the existing contract.

(Para 239 of DGS&D Manual and O.O. No. 112 dated 5-10-1967— for details regarding general damages see para 6.)

4(c) Necessity to invite the defaulting firm to quote against the risk purchase enquiry.

While effecting risk purchase, exclusion of the defaulting contractor from quoting against the risk purchase tender enquiry can be justified only when the breach consisted of his inability to supply goods of the contract description or when repurchase has to be effected on spot delivery in view of the urgency created consequent on default and it has been established that the defaulter cannot comply with this requirement. The exclusion of the defaulting firm will not, however, be justified in case the original contract was cancelled on account of the his failure to delivery stores due to rejection in inspection on account of rectifiable defect in the stores tendered.

In all other cases, barring the exceptions indicated above, the defaulting firm have necessarily to be kept in the picture while effecting the risk purchase. Where risk purchase is to be effected by advertised tender a copy of the tender notice should be sent to the defaulter informing him that the enquiry relates to repurchase of stores against the contract which was cancelled at his risk and expense. In case of repurchase by limited tender, a copy of the tender enquiry should be sent to him informing him of the position. Even in cases where repurchase is effected by local purchase by the indenter direct or by negotiations (which is rarely permissible in an extraordinary situation) the defaulter should not be denied an opportunity to offer. Where the defaulter's quotation happens to be the lowest acceptable it should be accepted. In such a contingency in order to guard against a second default, the defaulting firm should be called upon to furnish a security deposit equivalent to 10% of the total contract value.

(Para 239 and O.O. No. 112 of 1967).

[Please also see sub-para 4(d) below].

NOTE : According to legal opinion the exclusion of the defaulting firm from a risk purchase enquiry on the ground of their being blacklisted would prejudice our rights to recover the extra expenditure incurred in repurchase. Such firms should, therefore, be given an opportunity to quote against risk purchase enquiries. In case the quotation received from such a firm is not the lowest, we would be able to place the order

on the lowest tenderer and recover the extra expenditure incurred. If, on the other hand, the quotation of the black-listed firm happens to be the lowest, the case will have to be examined on merits and a decision taken in consultation with the Deptt. of Supply either to ignore or accept the offer.

(D.O. No. CSIB/15(1)/1/61 dated 23-9-1964).

4(d). *Security deposit to be taken from the defaulting firm in the event of placement of risk purchase order.*

According to clause 7 of the General Conditions of contract security deposit for due performance of contract can be called for prior to the acceptance of tender or after the acceptance. In case of risk purchase enquiries, if the quotation of the defaulting firm happens to be the lowest acceptable, they should be asked to furnish the security deposit equal to 10% of the proposed contract value within a target date with a clear warning that their offer will be ignored if the security amount is not furnished by the specified date. In the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract on the next best offer considered. While fixing the target date as indicated above, care should be taken to see that the other offers will be valid for acceptance up to a period beyond the target date so that placement of order on other tenderers may be considered in the event of failure of the defaulting firm to furnish the Security Deposit. It should, thus, be ensured that there is adequate margin between the target date set for furnishing the security deposit and the date of expiry of the validity of other tenders.

(Office Order No. 75 dated 12-7-1967)

It may be noted that the delegation of powers for waiver of security deposit to be obtained from unregistered firms for due performance of contracts contained in para 1(6) of the Deptt. of Supply letter No. 6(4)/66-II dated 22-1-1967 as circulated under O.O. No. 132 dated 1967 will not be applicable in respect of cases where security deposit has to be obtained from defaulting contractors. In such cases the purchase officers have no discretion to waive the security deposit or to reduce its quantum. Any relaxation in these provisions would attract the sanction of the Deptt. of Supply.

It should also be noted that security deposit in the above type of cases should be called for even from registered suppliers.

(O.O. No. 87 dated 18-9-1965).

4(e) In a risk purchase case lower tenders should not be ignored for any rectifiable errors of form such as non-submission of samples. This does not, however, mean that order should be placed on such firms even if they have not rectified the error inspite of giving an opportunity to do so by a target date.

(O.O. No. 80 dated 20-7-1967).

4(f) The risk purchase enquiry must essentially be confined to the quantity in default of the individual contractor and there should not be any bulking of demands.

(O.O. No. 116 dated 9-12-1961).

5. Recovery of extra expenditure incurred in risk purchase.

(a) Even though according to legal requirements, the recovery of risk purchase loss could be effected only after materialisation of supplies against the risk purchase contract, a demand notice should be served on the defaulting firm as soon as the risk purchase agreement is entered into asking them to deposit the extra expenditure involved. The standard letter circulated along with Office Order No. 67 dated 16-6-1966 may be used for serving the said notice. Simultaneously action should also be taken to withhold payment(s), if any, due to the contractor against other contracts. In cases where we are able to withhold payment and the defaulting contractor challenges the recovery, we may leave it to him to refer the matter to arbitration or to initiate legal proceedings. In cases where we are unable to recover the amounts due by withholding payments or otherwise, arbitration/legal proceedings should be initiated in spite of the fact whether supplies against the risk purchase contract have materialised or not. Since the arbitration/legal proceedings are protracted, it may be that in most of the cases by the time we have to produce evidence, supplies against the risk purchase contract might materialise and we would be able to comply with the legal requirements. In cases where the risk purchase contract is not completed, we have to endeavour to produce evidence in regard to the market value of the stores on the date of breach and claim the general damages.

[Sub-para (f) of para 48-A of the Contract Manual]

5(b) Recovery of risk purchase loss in cases where there is more than one default.

Cases are not uncommon where the second contractor (*i.e.* the one on whom the risk purchase contract is placed) also fails to supply the stores and where risk purchase has to be arranged on his account. To give an illustration suppose we have entered into a contract with a contractor 'A' for supply of certain stores. 'A' fails to deliver the stores and the contract is cancelled and risk purchase agreement made with the another contractor 'B' at a higher price. 'B' also fails and a fresh risk purchase agreement is made with a third contractor 'C' still at a higher rate. 'C' Supplies the stores. The question is as to what should be the quantum of damages to be recovered from 'A' and 'B' respectively. If the stores involved are of an ordinary commercial nature *i.e.* stores which are readily available in the market, we can legally recover from the contractor 'A' the difference between the rate at which the original contract was placed on him and the market rate on the date on which he committed the breach. So far as 'B' is concerned the actual extra expenditure incurred (*i.e.* the difference between the rates of the contracts placed on 'B' and 'C' in risk purchase can be recovered. On the other hand, if the stores to be purchased are not of an ordinary commercial nature (*i.e.* stores to be fabricated accordingly to our specification etc. and which have no ready market), we are legally entitled to recover from 'A' the difference between the contract price on him and that of 'B' and from 'B' the difference between the contract price on 'B' and that of 'C'.

[Para 48-A(g) of the Contract Manual].

(c) Maintenance of a Register to watch recoveries and to ensure placement of risk purchase contract within the time limit.

In order to maintain a careful watch to ensure that risk purchase is effected within the time limit prescribed and the recovery of extra expen-

diture on repurchase is not lost sight of, a register in the *proforma* prescribed in Office Order No. 71 dated 7-6-1963 should be maintained by all the Supply Sections. As soon as a contract is cancelled at the risk and cost of a contractor the particulars regarding the contract should be entered into in the appropriate columns of the register. The register should be reviewed once a week by the Section Officer/Assistant Director concerned and should be put up to the Purchase Officer within whose powers the case falls including D.G. to keep him posted with the position of the case with a view to ensure that risk purchase is made within the minimum time possible but not later than the period of 6 months provided in the Conditions of Contract. If there is no entry to be watched, the register should be reviewed by the Section Officer/Assistant Director once a month.

As soon as the risk purchase agreement is placed, the particulars of this contract should be entered in the appropriate columns of the register and a careful watch kept till the amount due from the defaulting firm is recovered.

The O&M Section should examine the risk purchase registers maintained by the Sections at headquarters [Assistant Director (Admn.) in case of Regional offices] at regular intervals with a view to see that they are maintained properly and certify on the register after such examination that it is maintained in accordance with the existing instructions. They should bring to the notice of the Director of Supplies concerned in writing the defects, if any, detected by them during the course of their examination.

(Office Order No. 71 dated 7-6-1963).

(d) *Institution of arbitration/legal proceedings to effect recovery.*

If recovery of extra expenditure incurred in risk purchase or the recovery of general damages cannot be effected within three months through normal action such as demand from firms, retrenchment from pending bills, etc. the case should be brought to the notice of the Director of Supplies who should consider institution of legal/arbitration proceedings.

(Office Order No. 34 dated 25-3-1963).

6. *General damages.*

(a) As explained in the proceeding paras, under the conditions of contract we are entitled to recover from the defaulting contractor the extra expenditure incurred in the event of cancellation of a contract and consequent risk purchase. However, where no re-purchase is made or where re-purchase is made deviating from the norms set out above are entitled to recover by way of compensation only, the sum by which the contract price falls short of the price for which the purchaser might have obtained goods of the like quality at the time when they ought to have been delivered. In other words the amount recoverable in such cases is the difference between contract rate and the market rate on the date of breach and this is what is called general damages in legal parlance.

6(b) *Market rate on the date of breach-Ascertaining of.*

In order to ascertain the market rate it may not be necessary to issue a fresh enquiry. If the purchases of the same stores (in cases where store are marketable) or stores which are best and nearest substitute of the stores originally contracted for (where stores are not marketable) has been made during the period just before or just after the date of breach, the rate established in such purchases should be taken as the market price. Even in cases where no such purchases are made, the market rate may be calculated

on the basis of the lowest quotation received from *bona fide* sellers during that period. If the market rate cannot be ascertained by adopting the methods specified above, enquiries may be made from *bona fide* sellers as to whether they have/made any transaction during the period and the price at which they sold the store. The price intimated by the sellers in such cases may be taken as an evidence of market rate. In cases where it is considered necessary to invite fresh tenders to ascertain the market rate no indication should be given in the tender enquiry that the contract is 'not likely to materialise'. Such a stipulation will prejudice our right for recovery of general damages if it could be proved that the rates thrown up as a result of the tender enquiry containing these remarks were fictitious and unrealistic.

(Office Order No. 43 dated 3-5-1961 and Office Order No. 142 dated 8-11-1958).

6(c) *Cases where repurchase is made for different quality of stores.*

Where repurchase is made for different quality of stores Govt. cannot recover from the defaulting firm the actual extra expenditure incurred in such purchase. Only general damages can be recovered in such cases. If the market price on the date of breach cannot be ascertained in such cases, they may be closed with the approval of (i) the Director General/Addl. D.G. if the value of the contract is up to Rs. 10,000 and (ii) with the approval of the Deptt. of Supply and Finance if the contract value is more than Rs. 10,000.

6(d) *Cases where no repurchase is made.*

In cases where no repurchase is made after cancellation of the contract either due to withdrawal or reduction in demand by the Indentor, Govt. can recover only the general damages. Such cases will fall under the following two categories :

- (i) Cases where the contractor has committed breach of contract wilfully and documentary evidence to prove such wilful negligence on his part is available, and
- (ii) Cases where the contractor cannot be held responsible for the breach and non-supply of stores was due to reasons beyond his control.

With a view to decide whether the contract falls in any of the two categories mentioned above, the purchase officer should examine the case thoroughly in consultation with the Ministry of Law. As a result of such examination if it is revealed that there is wilful negligence on the part of the contractor, general damages should be claimed from him. Where security deposit is available it should be forfeited and set off against the general damages to be recovered. If the general damages to be recovered is more than the security available, action should be taken to recover the balance (*i.e.* the difference between the amount of general damages and the security deposit) amount.

In cases where no repurchase is made due to the withdrawal of the demand by the indentor, the general damages recovered should be credited to DGS&D's account. However, where loss is reported by the indentor, the general damages should be credited into the indentor's account to the extent of the amount of loss.

If it is not possible to establish the claim for general damages the cases of the type at (i) above may be closed with the approval of (a) the Director General/Addl. D.G. if the value of contract is up to Rs. 10,000 and (b) the Deptt. of Supply and Finance if the value exceeds Rs. 10,000 suggesting administrative action against the contractor wherever necessary. The cases falling under category (ii) may be closed with the approval of the purchase officer next higher to the one within whose powers of purchase the case falls in consultation with Finance.

(O.O. No. 43 dated 3-5-1961 and O.O. No. 78 dated 30-6-1962).

7. *Forfeiture of security deposit in the event of cancellation of contract.*

The entire security deposit taken for due performance of contract can be forfeited in the event of breach of contract by the contractor irrespective of the fact whether or not the Govt. have sustained any loss on account of such breach. Forfeiture of security deposit does not prejudice Govt.'s right to make risk purchase and recover damages on account of such risk purchase. In assessing the damages on account of such risk purchase, credit must, however, be given for the security deposit forfeited as above. In other words :

- (i) If the security deposit is available it should be forfeited and only the difference between the security deposit and the actual loss sustained on account of risk purchase recovered from the defaulter. In the event the loss exceeding the security deposit, the excess can be recovered from the contractor. The Govt. cannot, however, recover the full loss and also in addition forfeit the security deposit.
- (ii) If no security deposit is available the actual loss sustained on account of risk purchase or the general damages should be recovered.

(Para 50 of the Contract Manual).

8. *Miscellaneous Provision.*

(a) Extra freight and other incidental charges such as sales tax, cartage, packing charges, loading and unloading charges etc. which the purchaser may have to pay to the contractor as extra charges incidental to the purchase, are recoverable from the defaulting contractor.

[Note (1) Under para 239 of DGS&D Manual].

8(b) In respect of developmental stores, with a view to create more capacity and stipulate competition against future demand, educational orders may be placed on new firms, provided they are found suitable in all respects and are willing to accept educational orders for small quantities. Such contracts can be cancelled without financial repercussion on either side if the firms are unable to complete the orders within a period of 6 to 8 months. These instructions, however, do not apply to those firms who have already established production of developmental stores on the basis of which 80% of the requirements of the stores are straightaway placed on them against open tenders.

[Office Order No. 95 dated 27-8-1966 and Memo. No. CSIA/49(95)/I dated 28-4-1967].

8(c) Whenever a contract is cancelled and risk purchasing arranged, the Supply Section concerned should advise the P&AO, by means of a letter the particulars of the original A/T against which the new contract has been placed and the difference in price recoverable from the defaulting contractor. Similarly while advising the P&AO. of the recovery to be made from the defaulting contractor, the Supply Section should also inform him of the particulars of the repurchase A/T in order to enable him to link the transactions.

(Routine Note No. 27 dated 9-6-1960).

8(d) Claim for risk purchase loss should not be normally enforced on Govt. Establishments for failure to deliver stores against contracts placed on them. Serious cases of default should, however, be brought to the notice of the Head of the Department or the State Government concerned. Cases in which it is considered necessary to deviate from this rule should be referred to the Deptt. of Supply for approval.

The above provisions will not apply in respect of contracts placed on Govt. Undertakings as distinct from Govt. Establishments. Cases of this type would have to be decided on merits.

[Note 3 under para 233(1) of the DGS&D Manual].

8(e) The question of recovery of risk purchase loss against trial/educational orders etc. should be decided on the merits of each case taking into consideration the circumstances under which the order was placed.

8(f) If on re-examination of a case in the light of a representation of the firm against our decision, the intention is to reduce a portion of the Govt.'s claim for risk purchase already imposed by the competent authority, the firm's representative should be sent for and asked orally to give a letter in writing that the firm would pay the said amount (*i.e.* the reduced amount) in full and final settlement of the claim for Risk Purchase. The intention of taking such a declaration is to avoid the contingency of the matter being referred to Arbitration etc. after we have communicated the decision to reduce the damages imposed. This is not to be disclosed to the firm and in case the firm refuse to give any such declaration the original decision should stand.

(Para 236 of the Manual).

9. Powers for cancellation and reinstatement of cancelled contracts and waiver of risk purchase loss.

(a) All cases of refusal of requests for extension in contract delivery date and cancellation of contracts should be decided in consultation with the next senior officer but not below the level of a Director of Supplies.

(b) Cases of reinstatement of cancelled contracts should be treated as contracts placed on negotiated basis.

(c) Powers for waiver of risk purchase loss indicated below :—

(i) Director General—Loss up to Rs. 1,000.

(ii) Dy. Director General—Loss up to Rs. 100.

Cases where the loss incurred is more than Rs. 1,000 would have to be referred to the Deptt. of Supply.

(Para 337 of the Manual).

It is also necessary to issue a formal sanction in cases where the extra expenditure incurred in risk purchase is waived.

Sd/- M. M. PAL
Dy. Director (Cdn. Supplies I)

Standard Distribution.

(On file No. CDN-2/9(1)/I/68.

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS
(SECTION CDN-2) NEW DELHI-1.

Officer Order No. 10

Dated 25-1-1968.

SUBJECT :—*Delivery period in contracts—Comprehensive instructions regarding.*

All current existing instructions on the above subject have been consolidated up to date and are reproduced below for guidance of all concerned.

* * * * *

8. *Intimation of lower market trend to the inspectorate.*

As already stated in Para 3 above, the Purchase Officers are required to keep themselves abreast of the rise and fall in market prices and to make full use of the knowledge at the proper time such as expiry of the delivery period in contract. In cases where delivery dates have expired and the price of the material has also gone down, they should take quick and timely action by addressing telegraphically to the inspectorate concerned not to inspect the stores tendered after the expiry of the delivery date while the question of securing reduction in prices by negotiation or repurchase at cheaper rates after cancellation of the original contract is under consideration.

(Para 235 of the DGS&D Manual).

(ii) Whenever lower trend in prices is noticed, intimation to that effect should be given to the inspector concerned even in cases where the delivery date has not expired so that he (inspector) is forewarned not to inspect the stores tendered after the expiry of the delivery date. In such cases the inspector should also be asked not to inspect the stores tendered too late by the supplier though within the delivery period or grace period (where such provision exists) provided the inspection cannot be completed within the delivery period or grace period, as the case may be.

* * * * *

12. The instructions contained in paras 1, 2 and 4 to 11 above are intended to serve as a refresher to the purchase officers and (except sub-para (ii) of para 8) are merely reiteration of the existing instructions lying scattered in various Office Orders etc. issued by CDN from time to time, Manual of Office Procedure for Suppliers, Inspection and Disposals and the Contract Manual. Para 3 and sub-para (ii) of Para 8 incorporate

certain fresh instructions which should be noted by the Purchase Officers/ Sections very carefully.

M. M. PAL
Dy. Director (CS-1)

Standard Distribution

on File No. CDN-II/CSIB/10(8)/1/67.

GOVERNMENT OF INDIA
DEPARTMENT OF SUPPLY

Note showing action taken or proposed to be taken on the recommendations of the Public Accounts Committee.

Recommendation

"The Committee regret to note that, as against the capacity of two to three thousand c. ft. of timber per month, orders were placed on the firm for about 45,000 c.ft. of timber to be supplied over a period of eight months. The Committee are unable to understand how orders were placed on this unregistered firm much beyond its capacity."

[S. No. 18 (Para 5.85) of Appendix VIII to the 21st Report (4th Lok Sabha)].

"The Committee regret to note that although the Ministry of Finance had observed on 6th November, 1965, that it "was worth while to investigate how so many contracts came to be placed" on the firm if their financial position was "so bad" the Department called for the explanation of the officers only in March, 1967. The Committee hope that the Department will take immediate steps to finalise the case."

[S. No. 19 (Para 5.91) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

The disciplinary aspect is under consideration. The results will be communicated to the Public Accounts Committee as soon as the cases are finalised."

Recommendation:

"The Committee fail to understand how a vague certificate from the firm's bankers, such as that their dealings are "quite fair", was considered as a satisfactory evidence for their capacity to execute contracts of this magnitude when the bankers failed to answer a specific query by the DGS&D in this regard. They hope that Government will review the question of taking adequate safeguards so that orders of a substantial nature are not placed on an unregistered firm even though it may be in the small scale industry sector."

[S. No. 19 (Para 5.92) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

Necessary instructions have been issued in DGS&D Office Order No. 54, dated 12th June, 1967 and Office Order No. 82, dated 25th July, 1967 (Annexure I and II) requiring the repurchase officers to ensure that orders are not placed on untried and unregistered firms successfully without ascertaining their existing load, capacity, performance etc. These Office Orders

also require that the Purchase Officers should prepare in each case of purchase, a ranking statement indicating the capacity of the firm, load in hand, past performance etc. Moreover, to ensure that there is no ambiguity in obtaining reports on the financial status of the firm, a standard letter has been prescribed for issue to Bankers as per D.G.S. & D. Office Order No. 40, dated 6th May, 1967 (Annexure III).

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M. No. 43 (38)/66-PI].

K. RAM,
Secretary.

NEW DELHI:
24th January, 1969

ANNEXURE I

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS

N. I. BUILDING, PARLIAMENT STREET,

NEW DELHI-1

Office Order No. 54

Dated 12th June, 1967.

SUB. :—*Comparative and Ranking statements of Tenders—Preparation of.*

REF. :—*Para 142 of the Manual of Office Procedure for Supplies, Inspection and Disposals.*

2. *Routine Note No. 32, dated 26th July 1966 and 4, dated 10th January 1967.*

According to the existing instructions as contained in the Routine Notes referred to above in all cases where more than 3 offers have been received a ranking statement has to be prepared and kept on the file. This statement has to be prepared in order of the price and must cover atleast 3 more offers than the lowest one proposed to be accepted.

2. It has since been decided that the ranking statement should not only contain the details relating to prices but also other factors such as delivery terms, capacity, load already in hand, past performance, conditions quoted by the tenderer and such other details which are essential for a purchase decision. If a comprehensive ranking statement as indicated above is available it will not be necessary to give details of the offers included in the statement again in the purchase proposals. Instead a reference may be made in the purchase proposals to the ranking statement which will contain all essential details.

3. The ranking statement should be placed on the 'Notes' portion of the file and should be signed by the officer initiating the purchase proposals.

4. A question has also been raised as to the place where the comparative statement should be placed on the file. It has been decided that the comparative statement should be kept in a separate folder along with the unaccepted tenders. These should be properly stitched. In other words, normally, purchase files would contain 4 folders :

- (a) Noting
- (b) Correspondence

(c) Folder of tenders and C/s. and

(d) Routine Papers.

All purchase officers/sections are required to ensure strict compliance of the above instructions.

Standard Distribution

On File No. CSIB/29(37)/III/65.

ANNEXURE II

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

(CO-ORDINATION SUPPLIES SECTION IB)

NEW DELHI

Office Order No. 82

Dated 25th July, 1967.

SUB. :—*Comparative and Ranking Statements of tenders—Preparation of.*

REF. :—*Office Order No. 54, dated 12th June, 1967.*

Instructions were issued in the Office Order referred to above to the effect that a comprehensive ranking statement should be prepared in order of the price in all cases where more than 3 offers have been received. In addition to the prices quoted by the firms, the ranking statement is also required to incorporate other factors such as capacity, load already in hand, deviations from the standard terms and other details which are essential for a purchase decision.

2. It may be necessary for the purchase sections to ascertain from the registration branch in case of registered firms the details regarding capacity. The details regarding load can be ascertained from the Progress Wing in respect of items for which they are required to maintain load charts in accordance with Office Order No. 45, dated 26th May, 1967. The data in respect of other items (*i.e.*, items for which no load chart is maintained by Progress Wing) may be taken from the information available with the Purchase Sections themselves. The Statistical Branch will also be in a position to provide some assistance to the Purchase Sections in this matter.

3. It has been brought to notice that in certain Directorates the ranking statements are at present prepared by the Technical Assistants. There may not be any objection to these statements being prepared by the Technical Assistants or other members of the staff. The ultimate responsibility for the correctness of the statement would, however, rest with the officer initiating the purchase proposals.

4. It has also been decided that the ranking statement should be prepared in the following proforma :—

(a) Name of the firm.

(b) Price per unit.

- (c) Whether the stores offered conform to the required specification/drawing.
- (d) Capacity.
- (e) Load in hand.
- (f) Past performance.
- (g) Deviations, if any required from the standard terms and conditions.
- (h) Remarks (Other important points, if any, may be indicated here).

All purchase Officers/Sections are requested to note the above instructions.

Standard Distribution

On File No. CSIB/29(37)/III/65.

ANNEXURE III

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS

N. I. BUILDING, PARLIAMENT STREET,

NEW DELHI-1

Office Order No. 40

Dated 6th June, 1967.

SUB. :—*Placement of Contracts on unregistered firms.*

REF. :—*Para 149 of the Manual of Office Procedure for Supplies, Inspection & Disposals.*

2. *Office Order No. 19, dated 13th March, 1967.*

According to the existing instructions unregistered firms are required to indicate the names of their bankers in the tenders submitted by them. Before placement of orders on such firms, a reference is made to the banks concerned as to their (*i.e.*, firm's) financial standing and orders are placed only on receipt of satisfactory reply from the banks. It has been decided that the form of letter enclosed hereto should be used hereafter for the purpose of calling for reports from the banks in regard to the financial standing of the firms.

2. It will be seen from the letter to be addressed to the banks that they are required to give their reply in unambiguous terms. In spite of this stipulation, if the reply received from any bank is found to be vague and ambiguous, the quotation of the firm in respect of whom such bank report has been received should not be considered ordinarily. The powers for passing over of lower offers in such cases, will be governed by the delegation of powers as contained in para 1(8) of the Deptt. of Supply letter No. 5/1/63-PI, dated 22nd June, 1963 circulated under O. O. No. 106, dated 5th August, 1963.

3. The purchase Officers are also required take due note of the past performance of the firms while taking tender decisions. Unregistered firms are required to furnish along with their tenders, a performance statement in L23LSS/69—4

the prescribed form indicating the performance against orders placed on them prior to the date of the tender. If it is decided in any case to ignore a lower offer on the ground that the previous performance of the tenderer has not been satisfactory it would be necessary to place on the file an authenticated (*i.e.*, a copy signed by any gazetted officer) copy of the performance statement in support of the proposal.

4. The Purchase Officers should also note that it would not be prudent to place a large number of orders involving huge amounts successively within a short time on unregistered firms—particularly on new firms without first watching their performance against earlier contract which was placed on them.

5. The purchase officers are also requested to adhere strictly to the instructions contained in the Deptt. of Supply O.M. No. 1(17)/62-PI, dated 4th March, 1967 (circulated under Office Order No. 19, dated 13th March, 1967) in regard to placement of orders on unregistered and/or untried firms.

Standard Distribution

On file No. CSIB/29(1)/III/67.

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF SUPPLIES AND DISPOSALS
NEW DELHI-1

To

The Manager

SUB. :—*Reports on the financial standing of contractors.*

Dear Sir,

The undernoted firms have quoted competitive rates against our tender enquiry for the supply of and have indicated you as their Banker. I shall be glad if you will furnish me with a report on their financial standing and say whether their dealings with your bank have been of a sufficiently high order to enable them to carry out satisfactorily contracts involving sums amounting :

- (a) Up to Rs. 10,000
- (b) Up to Rs. 25,000
- (c) Up to Rs. 50,000
- (d) Up to Rs. 1,00,000
- (e) Above Rs. 1,00,000

2. Any information you may furnish in this connection will be treated strictly confidential, your reply should be unambiguous and should clearly state the category for which you consider them financially sound.

3. Please quote this office reference and date in your reply.

Yours faithfully,

for Director General of Supplies and Disposals

FULL NAME & ADDRESS OF FIRM.

GOVERNMENT OF INDIA
MINISTRY OF FOREIGN TRADE & SUPPLY
(DEPARTMENT OF SUPPLY)

Supplementary Note showing action taken or proposed to be taken on the recommendations of the Public Accounts Committee.

Recommendations

“The Committee regret to note that, as against the capacity of two to three thousand c.f.t. of timber per month, orders were placed on the firm for about 45,000 c.f.t. of timber to be supplied over a period of eight months. The Committee are unable to understand how orders were placed on this unregistered firm much beyond its capacity.”

[S. No. 18 (Para 5.85) of Appendix VIII to the 21st Report (4th Lok Sabha)].

“The Committee regret to note that, although the Ministry of Finance had observed on 6th November 1965, that it “was worth while to investigate how so many contracts came to be placed” on the firm if their financial position was “so bad”, the Department called for the explanation of the officers only in March, 1967. The Committee hope that the Department will take immediate steps to finalise the case.”

[S. No. 19 (Para 5.91) of Appendix VIII to the 21st Report (4th Lok Sabha)].

Action taken

In this Department's Action Taken Note, dated 24th January, 1969, it was stated that the disciplinary aspect was under consideration and that the results would be communicated to the P.A.C. as soon as the cases are finalised.

2. The disciplinary aspect has since been finalised and the position is as follows :

- (1) The then Deputy Director of Supplies has been advised to be more careful in future in the discharge of his duties.
- (2) One Assistant Director of Supplies has been severely warned and a copy of warning has been kept in his Character Roll.
- (3) Another Assistant Director of Supplies has also been warned and a copy of warning has been kept in his Character Roll.

New Delhi;

April 15, 1969.

[Ministry of Works, Housing & Supply (Deptt. of Supply), O.M.
 No. 43(38)/66-PI.]

MINISTRY OF WORKS, HOUSING & SUPPLY
(DEPARTMENT OF SUPPLY)

Note showing action taken or proposed to be taken on the recommendation of the Public Accounts Committee.

Recommendations

"The Committee expect that apart from removing the technical omission to mention the time limit up to which orders for an additional quantity could be placed, the arrangements in the office of the Directorate General of Supplies and Disposals should be such that all additional requirements of stores of a repetitive nature are duly taken into account well in time before the expiry of the current contract so as to avail of the provision to place additional orders to the extent of 25 per cent where beneficial to Government. The Committee would like Government to issue comprehensive instructions in the matter and ensure that they are complied with by all concerned in order to safeguard fully Government's interests."

[S. No. 20 (Para 5.98) of Appendix VIII to the 21st Report
(4th Lok Sabha)].

Action taken

The question regarding reservation of right to place order for additional quantity up to 25% has been fully clarified by the issue of Office Order No. 58, dated 14th June, 1967 (copy enclosed) which is in supersession of all the previous office orders on the subject. According to this office order, the clause has been amended to read as follows :

"The purchaser reserves the right to place order on the successful tenderers for additional quantity up to 25% of the quantity offered by them at the rates quoted.

Tenderers are bound to accept order for additional quantity under this clause if order is placed on them at the time of the placement of the contract or during the currency of the contract but before the expiry of the delivery date."

2. To ensure that all additional requirements of stores of a repetitive nature are duly taken into account well in time before the expiry of the current contract so as to avail of the provision to place additional orders to the extent of 25% where beneficial to Government, check points for indent planning etc. have been drawn up and circulated for the guidance of and compliance by the Purchase Officers in Office Order No. 98, dated 4th September, 1967 (copy enclosed). Point No. 11 under check points for Indent Planning is reproduced below :—

"11. Can the stores be covered by placing a repeat order or exercising the option to cover quantity up to 25% reserved against any existing contracts ?

(Para 17 of DGS&D's Manual and O.O. No. 58 of 1967)

3. The instructions contained in the D.G.S. & D.'s Office Orders No. 58 dated 14th June, 1967 and No. 98, dated 4th September, 1967 are considered adequate for the guidance of all concerned.

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M.
P. No. 43(33)/66-PI].

New Delhi;

the 27th August, 1968.

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
CSIB SECTION, NEW DELHI.

OFFICE ORDER NO. 58

Dated 14th June, 1967.

SUB. :—*Tender enquiries for items having frequent demands—Issue of.*

According to the existing instructions the following clause is required to be stipulated in all tender enquiries for stores having repetitive demands and for which no Rate or Running Contract is contemplated :—

“The purchaser reserves the right to place order on the successful tenderers for additional quantity up to 25% of the quantity offered by them at the rates quoted.

Tenderers are bound to accept order for additional quantity under this Clause if order is placed on them by”

2. The idea is to cover any additional demands up to 25% received within the time-limit specified in the Clause. This would avoid delay in coverage of indents and also the necessity for issue of tenders for the same items at frequent intervals, which if done, without due consideration of the market trend may result in additional expenditure.

3. As it will not always be possible to foresee which items have repetitive demands, it has been decided that the following “REVISED CLAUSE” should hereafter be incorporated in all tender enquiries except in case of enquiries for Rate or Running Contracts :—

“The purchaser reserves the right to place order on the successful tenderers for additional quantity up to 25% of the quantity offered by them at the rates quoted.

Tenderers are bound to accept order for additional quantity under this clause if order is placed on them at the time of the placement of the contract or during the currency of the contract but before the expiry of the delivery date.”

4. Any additional demand received before the placement of the contract or within the time limit specified in the clause can be covered straightway up to 25% of the quantity offered by the successful tenderer by including this additional quantity in the proposed contract or contract already placed. The Purchase Officer, within whose powers the value (including that of the additional quantity) of the contract falls will be competent to decide placement of order for additional quantity in such cases (O.O. No. 98 of 1960).

5. In case the demand(s) for the additional quantity is (are) more than 25% of that offered by the lowest tenderer on whom the order is proposed to be placed he may be asked to state :—

- (i) If he is prepared to accept the order for additional quantity according to the delivery schedule required, and
- (ii) If so, reduction in price that he is prepared to offer due to increase in quantity.

The order for additional quantity can be placed on receipt of satisfactory reply from the tenderer. In case, however, the additional quantity is beyond the capacity of the lowest tenderer, the offer of the next higher tenderer if

open for acceptance, may be availed of to cover the additional quantity. The procedure envisaged above amounts to negotiation and will, therefore, attract the powers for negotiated purchases (Office Order 118, dated 5th December, 1962).

6. When a supplementary demand up to 100% of the original quantity is received subsequent to the issue of a tender enquiry, the quantity in the original enquiry may be increased and the opening date of the tender suitably extended instead of going in for a fresh enquiry to cover the supplementary demand (Office Order No. 24, dated 18th December, 1963). The rules regulating advertisement of demands/issue of limited tender enquiries should be observed in such cases.

7. While taking decision the coverage of additional quantity in accordance with the instructions mentioned above the purchase officers have to ensure that there has been no downward trend in prices for the items concerned.

8. The above instructions are in supersession of all the existing instructions on the subject as contained in the following office orders :—

- (i) Officer Order No. 98, dated 21st December, 1960.
- (ii) Officer Order No. 76, dated 26th June, 1962.
- (iii) Officer Order No. 118, dated 5th December 1962.
- (iv) Officer Order No. 24, dated 18th December, 1963.
- (v) Officer Order No. 113, dated 23rd August, 1963.
- (vi) Officer Order No. 19, dated 20th February, 1964.

Sd./-

Deputy Director (CS-II).

STANDARD DISTRIBUTION

On file No. CSIB/29(39)/III/65.

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

CO-ORDINATION SUPPLIES SECTION IB

NEW DELHI

OFFICE ORDER NO. 98

Dated 4th September, 1967.

SUB. :—*Check points for indent planning, preparation of tender enquiry, consideration of tenders and drafting of contract.*

In supersession of check points circulated under Routine Note No. 32, dated 26th July, 1966 and O.O. No. 22, dated 28th February, 1966, a set of revised check points drawn up for the guidance of the purchase officers/sections at the following stages of procurement action is enclosed :—

- (i) Indent Planning stage.
- (ii) Preparation of tender enquiry.
- (iii) Consideration of tenders
and
- (iv) Drafting of contract.

2. It should be noted that the check points listed are only intended to be a guide for the purchase officers/sections. They are by no means complete or exhaustive and the purchase officers have to take into account the detailed instructions contained in the Manual of Office Procedure for Supplies, Inspection and Disposals and other instructions issued from time to time.

Sd./-

Dy. Director (CDN. Supplies I)

STANDARD DISTRIBUTION

On File No. CSIB/11(22)/1/67.

**CHECK LISTS FOR THE FOLLOWING STAGES OF
PURCHASE ACTION.**

1. **Planning of Indents.**
2. **Issue of Tender Enquiries.**
3. **Consideration of Tenders.**
4. **Drafting of Contracts.**

**By:-
CDN DIRECTORATE.**

J. Check Points for the Indent Planning

1. Whether I/O is a pre/post deposit party ?

If pre-deposit party have funds been deposited by them ?

- 2. What is the L.P.P. ? Check adequacy of funds provided by indenter as also the financial certificate.**
- 3. Check if consignee and inspection instructions are clear.**
- 4. Have the technical particulars been checked and are the required number of drawings and specifications available ?**
- 5. Has the indent been checked by AHSP, in case of Defence indents.**
- 6. Has the proprietary article certificate in the prescribed form been given if the store indented for is proprietary in nature ?**

(Para 84-A of DGS&D Manual).

- 7. In the case of imported stores, has the foreign exchange been provided and its source indicated ? If coverage against foreign exchange is out of special loans and funds, follow special procedure—obtain sole agency/waiver for purchase under A.I.D.**
- 8. Whether the delivery period is realistic ? If not, the indenter should be informed giving probable time required for delivery.**
- 9. If any of the points at 1—8 above are not clear address a consolidated letter to I/O with target date to make good points 1—8 above.**
- 10. Can the store be covered by Rate/Running Contract. If Rate/Running Contract exist for similar store and if Purchase Officer feels that item on Rate/Running Contract may serve the end use which the I/O has in view, advise I/O to accept the same with target date.**
- 11. Can the stores be covered by placing a repeat order or exercising the option to cover quantity up to 25% reserved against any existing contract ?**

(Para 17 of DGS&D Manual & O.O. No. 58 of 1967).

- 12. Can the indent be bulked with some other indent ? If it is decided not to advertise the tender record clear reasons thereof. L.T.I. should normally be issued to firms registered for stores in question. If proposed to address likely sources of suppliers who are the un-registered, record clear reasons for doing so.**

(Para 109 of DGS&D Manual).

- 13. Check correctness of T.E., in all respects and ensure issue of same to correct parties following the correct procedure.**
- 14. If stores are to be imported ensure DGTD clearance is available by the date of tender opening.**
- 15. For machine tools, the Development Officer of D.G.T.D. should be consulted.**
- 16. For operational indents, cover by direct negotiation on the basis of L.P.P. after obtaining competent approval if time does not permit issue of L.T.I.**

17. When the indent is Operational, firms to be asked to adhere to the tender opening date and not to ask for any extension.
18. Check if tender samples are really necessary and if not tell I/O to withdraw such a condition, Tender sample stipulation should be made with great care and caution.

(See Office Order No. 47 of 1966.)

11. Check Points for Preparation of Tender Enquiry

1. Ensure that standard forms are used for issue of tender enquiry and all amendments authorised to these forms from time to time are carried out before issue.
2. Has time and date for receipt of tenders been indicated ?
3. Has the time and date for opening of tenders been indicated ?
4. Has reasonable time been allowed to the tenderers to submit their quotations ?

(Para 103 of DGS&D Manual).

5. Has the period for which the tenders are to be kept open for acceptance been indicated realistically keeping in view the nature of the store and the time lag likely to be involved where consultation with the indenter on the suitability of offers received would become necessary.

(Para 120 of the DGS&D Manual).

6. Ensure that description of stores including specification/drawing is correctly indicated in the schedule.
7. Ensure that the tender enquiry is signed for and on behalf of the purchaser.
8. Tender samples should not normally be called where there is clear specification/drawing. Where tender sample is called and is required to be furnished to an authority specified for testing, a copy of the enquiry should be furnished to the authority concerned. The time within which the sample should be submitted should also be indicated in the enquiry.

(O.O. No. 47 of 1966).

9. Ensure that the Conditions of Contract applicable has been correctly indicated in the enquiry.
10. Ensure that the clauses contained in the standard forms used for issue of tender enquiry and the Central and Special Conditions of Contract should not be reproduced in the tender enquiry.
11. Check in case of stores where small scale units will be interested sufficient number of copies of the tender enquiry as required under the rules are sent to the NSIC.
12. Have the following clauses been correctly incorporated ?
 - (a) Sales Tax.
 - (b) Customs Duty.
 - (c) Excise Duty.
 - (d) Transit insurance.

13. Have you clearly indicated in the Invitation to Tender that if replies to the questionnaire in form No. DGS&D—100B are evasive and not clear, the tenders are liable to be ignored.
14. Have you incorporated in the enquiry a warranty clause in respect of stores where warranty clause is necessary?
(Para 132-C of DGS&D Manual.)
15. Have you included the appropriate price variation clause in the inquiry where such a provision is necessary?
(O.O. No. 78 of 1966).
16. In case of purchase of imported stores ensure that the appropriate Shipping clauses are incorporated in the tender enquiry. Other special conditions viz., payment terms for FOB/FAS contracts etc. should also be indicated in the enquiry.
(O. O. No. 49 of 1967).
17. Have you incorporated in the enquiry the special clause relating to coverage of additional quantity up to 25%?
(O. O. No. 58 of 1967).
18. Ensure also that all other Special conditions as per existing orders are incorporated in the tender enquiry.
19. Ensure insertion of pre-estimated liquidated damages clause in the tender enquiry in respect of critical items and other important stores.
20. Lay down principles for evaluation of tenders with the approval of the competent authority and get C/S and ranking statement prepared accordingly.
21. *Special points in regard to risk purchase tender enquiry.*
 - (i) Risk purchase tender enquiry should be on the same terms and conditions of the original enquiry.
 - (ii) As far as possible risk purchase should be made by advertised tender.
 - (iii) In special cases where limited tender enquiry is issued the defaulting firm should be given an opportunity to quote unless the breach of the original contract was caused on account of his inability to supply goods of the contract description.
(Para 239 of the DGS&D Manual).

III. Check Points for Consideration of Tenders.

(A) General Stores

1. Check comparative statements submitted with regard to its completeness and particularly in respect of price.
(Para 142 of DGS&D Manual).
2. Examination of the tenders in depth covering all aspects including existing load on the past suppliers, Delivery offered, performance, technical competence, etc.
3. After going through the tenders, prepare a ranking statement in order of the price indicating quantity offered, delivery, specifications etc. Prepare the ranking statement after compiling prices on equitable

basis taking the incidence of all elements of costs such as railway freight, transit insurance, sales tax etc. up to destination. This should be signed by the officer initiating purchase proposals.

N.B.—Ranking statement must cover at least three offers next higher than the lowest one proposed to be accepted.

(O. O. No. 54, dated 12th June 1967).

(B) *Plant & Machinery*

1. Check the comparative statement for its completeness.
2. Check the prices of all the tenderers with the tenders for its correctness.
3. Scrutinise tenders for technical specifications and corresponding price.
4. Prepare ranking statement in order of the price, taking into account specifications, price, delivery and capacity of the firm. Prepare the ranking statement after compiling prices on equitable basis taking the incidence of all elements of costs such as railway freight, transit insurance, sales tax etc. up to destination.

N.B.—The ranking statement must include at least three offers next higher than the one proposed to be accepted.

(C) *General*

1. Check up if any un-registered firm comes into zone of consideration. If such a firm is an S.S.I. Unit and the item involved is a simple store, ask for a competency certificate from the N.S.I.C. But if the item required involves a safety angle, obtain a capacity report from the Inspecting authority concerned. Only if the report is favourable and the firm is registered with NSIC consider waiver of security deposit. In respect of other un-registered firms coming within the zone of consideration, ask for capacity report from the Inspecting authority, banker's report from the bankers and I.T.C.C. only if the offers of such parties are acceptable technically or otherwise. This action should be taken with the approval of the competent authority immediately after the preparation of the ranking statements.

(Para 149 of DGS&D Manual).

2. Ensure that capacity reports are not called for haphazardly and in piece-meal and earlier capacity reports should be made full use of which are valid for a period of one year. Again capacity reports are to be called for only on firms who come within the zone of consideration. Further, no capacity report need be called for in respect of firms either recommended by the D.G.T.D. or borne on the list of D.G.T.D. as scheduled industries. Part coverage can be made on such firms.

(O. O. No. 28 of 1967).

3. Where stores are required to I.S.I. specifications and firms quote for I.S.I. marked goods and submit proof that they are authorised to mark their products as I.S.I. marking, no capacity report need be called for.

4. Check if foreign exchange is required. If so, take up with the indenter immediately, giving him target date.
5. Check up if clearance for import is necessary, if so, obtain the same from the DGTD straightway.
6. Check up if additional funds would be necessary. If required, take up with the indenter straightway and give him a target date.
7. Check up terms and conditions offered by firms within consideration zone and highlight those terms and conditions, which are at variance with our general conditions of the contract. High-light the existing load and past performance of the firms recommended for placement of orders. Bring out very clearly deviations, if any, proposed to be allowed from our standard terms relating to inspection, despatch, payment, price variation, arbitration clause etc. for any special reasons and obtain sanction of the competent authority.
8. Check up if essentiality certificate is required for ferrous metal. If necessary, make an immediate reference to MES Section for ferrous metals.
9. Ensure that the late offers are not recommended as routine, but where it is inevitable, obtain the approval of the competent authority from the very beginning.
10. Check up, if for technical assessment, a reference to the indenter is necessary. If so, it must be made immediately after the ranking statement is ready after obtaining competent approval. Such a reference should be precise and should contain our own analysis/recommendations giving a realistic target date to reply.
11. Ensure that the delivery available from the tender(s) recommended for acceptance will meet the indentors requirements.
12. Check if a pre-estimated liquidated damages clause is to be enforced on the successful tenderer and whether he has accepted the same.
13. Bring out clearly pre-contract deviations, if any, proposed to be allowed clearly in the purchase proposals.
14. Ensure that in case of Rate/Running Contracts, contracts are normally placed on registered and established firms which are capable of supply of stores required. Check the nature of the indent and ensure coverage of 80% of total requirements in case of urgent/express indents on registered or known suppliers and only 20% on other unregistered and untried firms, subject to favourable capacity reports. In case of ordinary indents, 30% should be covered on registered and known suppliers straightway and balance 50% after receipt of satisfactory capacity reports on unregistered and untried firms.

(O. O. No. 19 of 1967).

(D) Special points in regard to risk purchase contracts.

1. It should be ensured that risk purchase agreement is concluded within 6 months of the date of breach of the original contract. Law Ministry should be consulted in case of doubt about the date of breach.
2. Risk purchase contract should be on the same terms and conditions as the original contract (apart from delivery time) *i.e.*, the goods should be of the same specification, liable to inspection by the same Inspection authority etc.

3. If the defaulting firm's quotation happens to be the lowest it should be accepted normally. In order to safeguard against a second default, the defaulting firm should in such cases be asked to furnish 10% Security Deposit before contract is actually awarded to them.

(Para 239 of the DGS&D Manual)

IV. *Check Points for Preparing/Checking Draft Contract*

1. Have the name and address of the contractor been correctly incorporated in the A/T ?
2. Have you satisfied yourself that the delivery period stipulated in the contract is in accordance with the delivery offered by the tenderer and is not vague ?
3. If the firm has asked sales taxes extra, have you made provision for that in the contract indicating specific rate of taxes.
4. If the firm has asked for excise duty as extra, have you made provision for that in the contract ?
5. Have you ensured that the terms and conditions stipulated in the contract are accepted by the firm in its offer ?
6. Have you given the consignee instructions correctly ?
7. Have you given despatch instructions correctly ?
8. Have you shown the Inspection authority and Inspecting Officer correctly ?
9. If the inspection responsibility is that of sub-office of an Inspection Circle, have you also endorsed a copy of the contract to the concerned sub-office ?
10. Have you given the head of account and Accounts Officer of the Indentor correctly ?
11. Has the arbitration clause been properly incorporated in the contract in keeping with answer to Q. No. 14 from DGS&D 100-B in firm's tender ?
12. Have you ensured that the specifications given in the contract are in accordance with those accepted by the firm and are complete in all respects.
13. Have you satisfied yourself that all relevant communications from the contractor have been referred to in the contract ?
14. Have you ensured that the name of the paying authority is correctly mentioned in the contract ?
15. Has the firm, if unregistered, agreed to deposit security against the contract ? If so, has the necessary provision been made in the contract ?
16. In case of approval of advance sample/drawing by the indentor/consignee, has a definite time limit been laid down for the return of the approved sample/drawing ?
17. Has the transit insurance clause been correctly stipulated ?
18. Have copies of the contract been correctly endorsed particularly to the Inspector and the Pay & Accounts Officer ?

19. Is the 'Steel Clause' stipulated in the contract strictly in accordance with the tender condition and Essentiality Certificate obtained from MES Section and attached to the A/T?
20. In case of imported stores where import Recommendation Certificate is required to be issued, is the IRC being issued with the A/T?
21. In case of imported stores, has the Customs Duty Clause been correctly incorporated?
22. If the firm has agreed to placement of additional 25% quantity, has the Government's right been reserved up to the agreed date?
(O. O. No. 58 of 1967)
23. Has a Warranty Clause as agreed to by the firm been incorporated? Where necessary stipulate condition for furnishing Warranty/Bank Guarantee/Performance Bond/Hypothecation deed/Indemnity Bond etc. after getting the forms of the same vetted by the Contract Officer.
24. Have you ensured that all the clauses/conditions/stipulation proposed to be included in the contract according to the purchase proposal or based on the advice of the Min. of Law, if any, have been duly incorporated in the draft contract?

Recommendation

The Committee regret to observe the inordinate delay of nearly three months in processing an urgent tender referred to in sub-para 1 of para 5.99 of this Report. The Committee consider that if negotiations with the firm had been held and finalised without delay, Government would have been able to purchase stores at the lowest price offered and avoided extra expenditure of Rs. 1.13 lakhs. Government should impress on all concerned the need for finalising tenders expeditiously in order to secure maximum benefit to Government.

[Serial No. 21 (Para 5.107) of Appendix VIII to the 21st Report
(Fourth Lok Sabha)]

Action taken

Comprehensive instructions regarding the policy and procedure to be followed in dealing with indents of all categories have been issued in Office Order No. 22, dated 9th February, 1968 for the guidance of the Purchase Officers. A copy of this Office Order is enclosed.

[Ministry of Works, Housing & Supply (Deptt. of Supply)
No. PI-43(35)/66, dated July 1968.]

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

(COORDINATION—1 SECTION)

New Delhi

OFFICE ORDER NO. 22

Dated 9th February, 1968

SUB. :—*Indents—Policy and procedure—Consolidated Instructions regarding—*

Instructions in regard to indent policy and procedure issued from time to time are contained in para 63 to 95 of the DGS&D Manual and various

L23LSS/69—5

Office Orders/Routine Notes issued. These have been consolidated and made up to date and are reproduced below for the guidance of Purchase Dtes.

Indents may be classified broadly as under :—

- (a) *Ad hoc* indents
- (b) Programme/Works Programme Indents
- (c) Express/Operational Indents
- (d) Forward Programme Indents
- (e) Indents covered by AID/Foreign Loans etc.

Indents are required to be placed on the DGS&D/Regional Offices/Missions in the prescribed forms complete in all respects, where the value exceeds Rs. 25,000 for non-Rate/Running Contracts items and for Rs. 1,000 or above for Rate Contract items. Indents below Rs. 25,000 may also be placed on DGS&D in special cases, where so decided. and in cases of stores of proprietary nature and indents covered by Foreign AID Loans etc.

Planning of indents on receipt in DGS&D is the first phase and this should be done by Director of Supplies concerned himself, in consultation with development officer and Dy. Director/Asstt. Director, Supplies concerned. This should be completed within 24 hours of the receipt of the indent in cases falling within his powers. In case a reference is to be made to higher authorities the planning should be completed within 48 hours. The following check points for indent planning stage have been prescribed :—

Check points for the indent planning

1. Whether I/O is a pre/post deposit party? If pre-deposit party have funds been deposited by them.
2. What is the L.P.P.? Check adequacy of funds provided by indenter as also the financial certificate.
3. Check if consignee and inspection instructions are clear.
4. Have the technical particulars been checked and are the required number of drawings and specifications available?
5. Has the indent been checked by AHSP, in case of Defence indents.
6. Has the proprietary article certificate *in the prescribed form* given if the store indented for is proprietary in nature?
7. In the case of imported stores, has the foreign exchange been provided and its source indicated? If coverage against foreign exchange is out of special loans and funds, follow special procedure—obtain sole agency/waiver for purchase under A.I.D.
8. Whether the delivery period is realistic? If not, the indenter should be informed giving probable time required for delivery.
9. If any of the points at 1—8 above are not clear address a consolidated letter to I/O with target date to make good points 1—8 above.
10. Can the stores be covered by Rate/Running Contract. If Rate/Running Contract exist for similar store and if Purchase Officer feels that item on Rate or Running Contract may serve the end use which the I/O has in view, advise I/O to accept the same with target date.

11. Can the stores be covered by placing a repeat order or exercising the option to cover quantity up to 25% reserved against any existing contract?

(Para 17 of DGS&D Manual & O.O. No. 58 of 1967)

12. Can the indent be bulked with some other indent? If it is decided not to advertise the tender, record clear reasons thereof. L.T.I. should normally be issued to firms registered for stores in question. If proposed to address likely sources of suppliers who are un-registered, record clear reasons for doing so.

(Para 109 of DGS&D Manual).

13. Check correctness of T. E. in all respects and ensure issue of same to correct parties following the correct procedure.
14. If stores are to be imported ensure DGTD clearance is available by the date of tender opening.
15. For machine tools, the Development Officer of DGTD should be consulted.
16. For operational indents, cover by direct negotiation on the basis of L.P.P. after obtaining competent approval if time does not permit issue of L.T.I.
17. When the indent is Operational, firms to be asked to adhere to the tender opening date and not to ask for any extension.
18. Check if tender samples are really necessary and if not tell I/O to withdraw such a condition. Tender sample stipulation should be made with great care and caution.

(See Office Order No. 47 of 1966)

At the planning stage the Director should give detailed instructions after taking into consideration the various factors e.g., L.P.P./firms on whom orders were placed earlier/capacity/location of firms *vis-a-vis* consignee etc.

In case of items which are on Rate/Running Contracts he should pass orders regarding Rate/Running Contract holder on whom Supply Order should be placed. This would obviate delay in placement of supply order. In these indent planning meetings not only the mode of tender enquiry be decided but also a stage-wise programme of coverage should be drawn up. In the case of Rate/Running Contracts the aim should be to ensure conclusion of fresh contracts at least one month before the expiry of the existing contracts.

In respect of indents valued over Rs. 30 lakhs D.G. would like to hold planning meetings himself in his room which should be attended to by the concerned Directors and DDG. Director should ensure that information on check points prescribed for the planning of indents is fully made available to D.G. in such meetings.

In the case of composite indents from River Valley/Irrigation/Power projects containing various items requiring matching deliveries, placed on DGS&D, closely coordinated action is required and overall planning is called for which would be done under the direction of ADG. Before such an indent is split up for allocation to different Dtes, dealing with different items a meeting of the senior dealing officers should be arranged by Director (Planning) in the room of ADG and a programme laid out for procurement

of all the items required. In some cases it may be useful to associate the indenter with this planning. The indenter should be furnished with a planned programme so drawn up. The Dtes. would report progress at the intervals laid down in the planning programme to Project Dte. DDG who is in overall charge of project Dte. will have full authority to give directions with a view to achieving coordinated deliveries. He would, if necessary, also bring the lapses, departures from the programme, major shares and the like, to the notice of ADG for such orders as the later may consider appropriate.

In the case of indents for Defence and other indentors there should normally be no amendments or alteration to specifications and drawings after they have been sent to DGS&D. If, however, any amendments are called for, these should only be done with the approval of the Head of the Deptt. or any specified officer of the Ministry/Deptt. and the effective date of the indent would reckon from the date these are received in DGS&D. If the drawings and specifications are not clear enough in the earlier stages for the suppliers to proceed with the manufacture and supply of stores, the indent should be returned forthwith to the indenter.

In cases where supplies are required on the basis of samples sent along with the indent, each such case should be considered on its merits. Where indentors are unable to submit specifications and drawings such cases should be put up to DDG/ADG concerned for orders before working to samples.

Where quantities in an indent are amended after their receipt in DGS&D each such case will be decided on its merits taking into account the quantum of the amendment. Where the quantities are increased, every endeavour should be made to cover at least the initial quantity straightaway so as to ensure delivery within the time required.

In cases where a reference has to be made to the indenter for provision of additional funds, foreign exchange, acceptance of protracted delivering, relaxation in specifications etc., adequate time should be given to him for a reply, making it known to him that if he fails to reply by the target date his indent is liable to be treated as withdrawn/cancelled and if a reply is received later the effective date of the indent will be advanced by the Number of days the reply is delayed beyond the date on which it was due. In such cases concurrence of DDG/ADG concerned should be taken before resorting to return/cancellation of indents for any valid reasons and for changing the effective date of the indents.

As regards effective date of programme indents it should be counted from the date prescribed for their receipt in DGS&D and not the date of their actual receipt, if it is prior to the prescribed date. In respect of programme indents received after the prescribed date, the actual date of receipt may however, be taken as the effective date.

Indents on receipt in the Central Indent Section in DGS&D are given a code number for which different code numbers have been allotted to major indenter/sub-indentors/supply Dtes. As the progress statistics is being mechanised, it is essential that a copy of the indent so numbered in Central Indent Section is given to Stats. Dte. When the original indent of the indenter is split into more than one DGS&D indents, the Central Indent Section should allot fresh serial Nos. to the indent items under each DGS&D indent separately since the mechanised system envisages a mechanical check over the serial Nos. of the indent items documented. In case of indents being cancelled, returned, 'X mandated etc. (i.e., indents not sent to pur-

chase Dtes), the action taken by Central Indent Section and the date of such action may be written boldly on the right hand top corner of the indent and copies sent to Stats. Dte. Copies of indents should be grouped together in separate batches by the broad group of indentors and sent to the Stats. Dte. daily, duly accompanied by a forwarding memo prescribed.

In respect of indents over 30 lakhs, instead of sending duplicate copies to the DG/ADG etc. as required under para 85(VII) of the Manual, Indent Section will send weekly statements to the senior officers as under :—

- (a) Weekly statement giving details of indents over Rs. 30 lakhs in value to D.G.
- (b) Weekly statement giving details of indent between Rs. 20 lakhs and Rs. 30 lakhs in value to ADG/DG (whoever may be concerned).
- (c) Weekly statement of indents between Rs. 6 lakhs and Rs. 20 lakhs in value to DDG concerned.

These statements are to be furnished in the prescribed proforma.

In regard to time limit for the various operations in the coverage of indents the following norms have been prescribed :—

- (a) Indents other than Programme/Developmental/Operational and these financed from AID/IDA/EXIM/ Bank/other foreign credits.
- (b) Indents for stores of highly technical nature necessarily requiring technical consultation with the indentors.
- (c) Programme/Developmental indents and indent financed from AID/IDA/EXIM Bank/other foreign credits.
- (d) All operational indents other than developmental and those financed from foreign credits.

Time interval between	Indents categorywise			
	A.	B.	C.	D.
(i) date of receipt of indent in purchase section & issue of T. Inquiry.	7 days	7 days	7 days	4 day
(ii) date of opening of tender & date of approval of Purchase proposal	4 weeks	8 weeks	3 months	10 days
(iii) date of approval of purchase proposal & placement of formal contract.	3 days	7 days	7 days	1 day

In case of Defence Indents these are to be covered within four months at all costs In order to avoid criticism by indentors as well as suppliers for delay in coverage of indents all possible measures to reduce disposal time should be taken by purchase officers. No interim action should be taken without the express approval of the competent purchase officer, who has to be fairly and squarely responsible for the timely disposal of the case.

In order to keep a watch on all indents the purchase officers are required to maintain record of pending indents on the case sheets prescribed for the purpose. A.D. (T.E. Cell) will prepare these sheets in duplicate and place one copy on the file at the starting point and send the other to the concerned purchase officers in whose powers the case falls. It will be the responsibility of the concerned purchase officer, thereafter, to maintain the case sheet of indents of his own powers. Officers of the rank of Directors and above will do so through their PA's. The duplicate case sheets should be

sent to Stats. Branch for extracting information with regard to the average time intervals taken by any purchase section for each operation of purchase work. These copies should be marked prominently by letters 'A' 'B' 'C' 'D', as the case may be as categorised above for coverage action. Directors are required to ensure that the case sheets sent to Stats. Dtc. are complete in this respect.

The time prescribed for coverage for each operation should invariably be shown in the Planning note of each indent so that the dealing officers, know both the scrutiny time and the coverage time prescribed.

Instructions in regard to purchase in excess of the estimated amounts shown on indents are contained in para 143 of the Manual. In case of Defence indents the limit has been reduced from 66½% to 50% subject to the total extra cost not exceeding Rs. 5 lakh.

In case of indents from Surveyor General of India, the limit is 66½% provided the total increase in the cost of the stores in each case does not exceed Rs. 5 lakhs. This is subject to the condition that if the increase in rates is due to change in specifications as originally approved by the Govt., a reference has to be made to the indenter so that he may obtain approval of the Govt. before the order is placed.

In the case of indents placed by Border Security Force, under the Ministry of Home Affairs, it has been agreed that when the excess over the total estimated cost does not exceed beyond 25% a reference to indenter need not be made.

Operational and urgent indents should carry a certificate as under duly signed by an authorised officer of the indenting Deptt. or a Secretary or Joint Secretary :

"Certificate of operational/urgent demands :

1. Description of item
2. Delivery date.
3. Name, address and telephone No. of officers detailed to progress the stores with the supplying Deptt.

I certify that the attached indent is classified as operational/urgent importance.

Designation of Certifying Officer."

These indents are classified operational/urgent in the following circumstances :

- (i) "Operational" only when the stores are immediately required for use on the front or in connection with Riots, Civil commotion and such like purpose.
- (ii) "Urgent" in respect of indents which if not supplied immediately within the stipulated date, will result in breakdown of essential services or will cause great inconvenience or loss to the state.

These indents on receipt in DGS&D will be registered in Central Indent Section and passed on to Inspection Wing on the same day. The indents

bearing proprietary certificate will be passed on immediately to the purchase officer concerned by name the same day and other indents without P.A.C. will be passed on to the Inspection Wing who will ensure that indents are scrutinised, their recommendations recorded immediately and the files forwarded to the respective Director of Supplies by name within 24 hours. The Purchase Officer will on receipt of the indent, indicate to the indenter by letter or telegram the probable date of supply of stores if he considers from his experience that the supply of stores within the delivery period given by the indenter is not possible. Any indent beyond the powers of Directors of Supplies will be shown to the DDG immediately on receipt and further action taken on his direction.

All urgent/operational indents received in the DGS&D should be scrutinised and tender inquiries issues within 48 hours of their receipt. All operational/urgent indents will be handled *ab inito* by DD(S).

Telegraphic/Telephonic bids, if obtained should be recorded by the purchase officer and firm asked to confirm these bids in writing. In such cases purchase decisions by the concerned purchase officer should be reported to the DDG. Contracts on the basis of tenders received should be finalised within seven days of their receipt. There should be no delay in handling urgent/operational demands and if any such demand has not been completely dealt with on the last working day of the week, the officer concerned will work on holidays till all such action on the demand is completed. The Head of Purchase Dtes. will be personally responsible for dealing with urgent and operational indents and they should ensure that the delivery period specified in the indent is complied with in all cases as far as possible. In case of any difficulties or bottlenecks in arranging supplies in time as requested by indenter, they should personally consult the DDG/DG as the case may be on such difficulties.

Indenting officer should be kept informed of the progress in such cases by sending him fortnightly report. Inspection in such cases will be arranged on priority basis.

A/Ts issued against urgent/operational indents for Inspection Wing and also office copy, should be prominently so marked on the top left hand corner. Indents files dealing with operational/urgent express indents, file boards, file bands, note sheets, typing paper, duplicating papers should invariably be of pink shade.

Indents for P.A.C. stores of imported origin from Civil Indentors will be placed only on DGS&D, New Delhi along with the required certificate whether the stores are available from Indian Agents or not and the purchase will be arranged by DGS&D. A copy of the invitation to tender must however be endorsed to DG. ISM, London/Washington as the case may be with the request that their assistance would be required, if there is no response in India.

As regards Defence Indentors, the Central Purchase Organisation should ordinarily process only those indents which are duly supported by PAC in the prescribed form. In cases, however, where the DGS&D/Indenter are both unaware of the proprietary nature of the store the indents are X'mandated to the Missions without P.A.C. and the Mission should process such indents and finalise contracts without insisting on prior submission of PAC if the value of the indent is up to £500 and \$ 1,250 only. Such a

certificate should be obtained *ex-post-facto* for regularisation. As regards large value indents exceeding the above value, PAC should be obtained first, before finalising the contract. It should also be made clear to the indenter that any delay in furnishing the certificate, which may result in payment of highest price, will be to his account and the Mission will not be responsible for the same.

Sd./-

Dy. Director (Cdn. Supplies)

Standard Distribution

(On file CDN. 1/4(273)/1/68).

Recommendation

The examination of the case shows that the indenter had radically reduced the requirement from 1.77 lakh Kgms. in May, 1963 to only 0.46 lakh Kgms. in June, 1964 and that proper action was not taken by the DGS&D to safeguard Government's interest as soon as the original delivery period stipulated in the contract had expired. Another reason for not being able to claim general damages was the lack of information about the ruling market price at the time of the expiry of the specified delivery period. The Committee consider that indenting organisations should take every care to ensure that indents are placed on the Purchase Organisation on a realistic basis to obviate variations later. The Directorate General of Supplies and Disposals, on the other hand, should ensure that supplies are arranged in time and that in the event of failure of the contractor to supply the goods by the prescribed date, appropriate action is taken to safeguard Government's right to enforce risk purchase on the defaulting contractor in case of repurchase of the goods at a higher price from another supplier.

[Sl. No. 23 (Para 5.123) of Appendix VIII to the 21st Report (Fourth Lok Sabha)].

Action taken

With regard to the Committee's observation that indenting organisations should take every care to ensure that indents are placed on the Purchase Organisation on a realistic basis to obviate variations later, suitable instructions have been issued to the Indenting Department *vide* the Department of Supply's O.M. No. 43(42)/66-PI, dated 16th October, 1968 (Annexure I).

As regards the observation that DGS&D should ensure that supplies are arranged in time and that, in the event of failure of the contractor to supply the goods by the prescribed date, appropriate action is taken to safeguard Government's right to enforce risk purchase on the defaulting contractor in case of repurchase of the goods at a higher price from another supplier, appropriate instructions already exist in the D.G.S. & D. Manual for the guidance of the purchase officers. These instructions have been reiterated in D.G.S. & D.'s Office Order No. 11, dated 25th January, 1968 and Office Order No. 29, dated 1st March, 1968 (copies enclosed Annexure II & III).

[Ministry of Works, Housing & Supply (Deptt. of Supply)].

New Delhi;

The 20th December, 1968

No.-PI-43(42)/66.

ANNEXURE I

No. 43(42)/66-PI

GOVERNMENT OF INDIA

MINISTRY OF WORKS, HOUSING & SUPPLY

DEPARTMENT OF SUPPLY

New Delhi, the 16th October 1968

OFFICE MEMORANDUM

SUBJECT :— Radical Reduction in requirements after placing indents on D.G.S.&D., Para 90 Audit Report (Civil) 1967.

The undersigned is directed to state that in para 5.123 of their 21st Report (4th Lok Sabha) the Public Accounts Committee have observed as under :—

“The examination of the case shows that the indenter had radically reduced the requirement from 1.77 lakh Kgms. in May 1963 to only 0.46 lakh Kgms. in June, 1964 and that proper action was not taken by the D.G.S.&D., to safeguard Government's interest as soon as the original delivery period stipulated in the contract had expired. Another reason for not being able to claim general damages was the lack of information about the ruling market price at the time of the expiry of the specified delivery period. The Committee consider that indenting organisations should take every care to ensure that indents are placed on the Purchase Organisation on a realistic basis to obviate variations later”.

While appropriate action has been taken to implement the recommendation of the Committee to safeguard Government's right to enforce risk purchase on the defaulting Contracts, in the case of repurchase against contracts placed by D.G.S. & D., the Indenting Departments are also requested to keep in view the recommendations of the Committee and to take every care to ensure that indents placed on the Central Purchase Organisation are prepared on a realistic basis in order to obviate subsequent radical reductions in requirements.

Sd./-

A. K. AGARWAL

Under Secretary to the Government of India

To

1. All Ministries of the Government of India
2. All State Governments.
3. All Union Territories.
4. All Central Governments Undertakings.
5. Department of Administrative Reform, New Delhi.
6. D.G., Border Security Forces, New Delhi.
7. Cabinet Secretariat, New Delhi.
8. Rajya Sabha Secretariat, New Delhi.
9. Lok Sabha Secretariat, New Delhi.
10. Prime Minister's Secretariat, New Delhi.
11. C. & A.G. of India, New Delhi.
12. Supreme Court of India, New Delhi.
13. Military Secretary to President, New Delhi.

14. Planning Commission, New Delhi.
15. Border Roads Development Board, New Delhi.
16. Department of Atomic Energy, Bombay.

A. K. AGARWAL,
Under Secretary.

ANNEXURE II

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

SECTION CDN-II

NEW DELHI

OFFICE ORDER NO 11

Dated 25-1-1968

SUBJECT :—Risk Purchase—Comprehensive Instructions reg.

All current existing instructions on the above subject have been consolidated upto date and are reproduced below for guidance of all concerned.

1. According to clause 14(7) of the General Conditions of Contract as contained in Form No. DGS&D-68 (Revised) if the contractor fails to deliver the stores or any instalment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made, in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract.

2. *Responsibility of the purchase officers to arrange risk purchase within the specified time limit.*

It is the responsibility of the purchase officers to ensure that risk purchase is effected within the time limit as specified above. Any loss that may occur on account of the delay on the part of the purchase officer to effect risk purchase within the specified time limit will render him liable to disciplinary action as also for recovery of the loss so sustained on account of his negligence/default. Even though six months' time is provided, every endeavour should be made to effect repurchase within shortest possible time without waiting for the completion of the six months period. This will save a lot of legal complications.

[Also see para 5(c)].

NOTE : Repurchase within six months as indicated in para 1 above is enforceable only in cases where the default is on account of the contractor's failure to adhere to the contract delivery period or repudiation of contract before expiry of such period. In cases, however, where the contract is cancelled for reasons other than non-adherence of the contract delivery period or repudiation of the contract, repurchase should be effected immediately within a reasonable time.

(Para 239 of DGS&D Manual).

3. Procedure to be followed by the purchase officers in regard to cancellation of Contracts.

The following procedure should be followed by the Purchase Officers in regard to cancellation of contracts :

(a) The purchase officer should keep a careful watch on the date of delivery, keep himself fully informed as to what supplies have been made, what supplies are likely to be made by the date of delivery and what in general are the prospects of the contractor performing the contract.

(b) Where delivery is specified in instalments, he should wherever he is satisfied that performance is not likely to be forthcoming, cancel the instalments in default and call upon the contractor to execute the remaining part of the contract.

(c) In other cases (*i.e.* contracts stipulating delivery in one lot) where he consider it more expedient and is satisfied that performance is not likely to be forthcoming at all, he should cancel the entire contract or the quantity outstanding as on the date of expiry of the delivery period.

(d) Where it is intended to cancel a contract, it should be done immediately the breach has occurred. In certain cases decision is not however, taken immediately on expiry of the delivery date or the extended delivery date as the case may be, whether the contract should be cancelled or kept alive. Sometimes correspondence is exchanged with the firm after expiry of the delivery period thereby keeping the contract alive and by such action time ceases to be the essence of the contract. If time is to be made again the essence of the contract, we are required by law to give a notice to the contractor giving a reasonable time for performance and intimating him that time would be the essence of the contract. In such cases where the contract has been kept alive by the conduct of the parties, cancellation could be resorted to only after the expiry of the aforesaid notice period. It should be noted that the date for delivery fixed in such notice cannot be taken as the date of breach of the contract for counting the period of 6 months for the purpose of concluding the risk purchase contract unless it is accepted by the contractor either by correspondence or by making supplies. If the contractor does not accept the date either by repudiating it by correspondence or otherwise, the date of breach for the purpose of counting the six months period would be the date on which the original delivery period or the mutually agreed extended delivery period, if any, has expired.

(Routine Note No. 26 dated 4-4-1967)

(e) When suppliers account their failure to supply the stores to non-availability of wagons on account of booking restrictions, the factual position should be ascertained from the Railway concerned and the Ministry of Law consulted before resorting to cancellation at the risk and cost of the contractor.

Ministry of Law should be consulted in all cases where there are doubts about our right to cancel the contract.

(f) In cases where security deposit is called for by a specified date, default in furnishing the same by the target date is in itself a breach of the contract which entitles the Government to cancel the contract at the risk and cost of the contractor.

(Para 49 of the Contract Manual).

4. Measures to be taken to effect risk purchase

(a) As soon as a contract is cancelled steps should be taken to effect repurchase if the stores are still needed.

(i) *Stand by tenders*.—The buyer's right to effect repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the purchase officer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however where stores are most urgently required by the indentors and are not available from ready stock but have to be manufactured and some public harm would be caused by delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract. Issue of such stand by tenders should, however, be restricted to cases of purchase of special class or kind of stores which are not readily available in the market and whose price is more or less stable over comparatively long periods of time. In other words standby tenders which are opened not longer than a month before the date of breach can be accepted. On the other hand, in case of stores whose price is liable to fluctuate from day to day, it will not be advisable to accept standby tenders opened a long time before the date of breach. If at all it is found necessary in the public interest to accept a standby tender in such cases, such a tender should be the one opened only a few days before the date of breach. In any case it should be borne in mind that the cancellation of the contract on the defaulting supplier should precede the acceptance of the standby tender.

NOTE : Contracts placed against operational, critical and other important Defence requirements where stores are to be manufactured according to Defence specification/drawing and some public harm would be caused by delays in supplies, should be considered as cases which would justify the invitation of standby tenders prior to the date of breach.

(ii) In cases other than those mentioned above, if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Department of Supply should be obtained since placement of order on the basis of standby tender would prejudice to the right of the Government to recover extra expenditure incurred in risk purchase.

[Please also see Note under para 4(b) below].

(O.O. No. 112 dated 5-10-67).

4(b) Risk purchase to be on identical terms as the original contract.

Risk purchase contract should be on the same terms (apart from the delivery time) as the original contract *i.e.* the goods should be of the same specification and liable to inspection by the same authority and the terms of payment, provision regarding liquidated damages, arbitration etc. should be the same where the original A/T provides for submission of a sample by the firm for testing prior to bulk supply, a similar condition should also be incorporated in the risk purchase contract. The intention is that the terms of the new contract should not be more onerous or more liberal than those of the original contract except to the extent of the time of supply *i.e.* much shorter time for supply of the stores would be permissible under the law, provided of course a reasonable time is given. If in exceptional circumstances it is necessary to depart from this rule, alternative quotations

should be invited, one according to the terms of the original contract and the other according to revised requirements, the damages claimable being calculated on the basis of the legal advice obtained in each case.

It may also be added that even if the first purchase has been effected by negotiation or as a result of limited tender enquiry, the risk purchase contract should as far as practicable, be effected by advertised tender. This saves a lot of objections and is likely to help the Government in recovering the extra cost incurred. There is, however, no objection to effect repurchase by a limited tender enquiry since according to the conditions of contract the manner and method of such purchase will be in the entire discretion of the Secretary. It should, however, be borne in mind that the enquiry should not exclude any known suppliers.

NOTE : Whenever risk purchase is effected either on the basis of the standby tenders or on the basis of negotiation, the Ministry of Law should be consulted regarding Government's right to recover the extra expenditure incurred in risk purchase. If the extra expenditure incurred is not legally recoverable, claim should be made for recovery of general damages. The rate established by the standby tenders may be taken as the market rate on the date of breach for the purpose of claiming the general damages provided the standby tenders are opened on the date of breach. Care should, therefore, be taken in fixing the date of opening of standby tenders so that it synchronises with the likely date of breach in respect of the existing contract.

(Para 239 of DGS&D Manual and O.O. No. 112, dated 5-10-67—for details regarding general damages see para 6.)

4(c) *Necessity to invite the defaulting firm to quote against the risk purchase enquiry.*

While effecting risk purchase, exclusion of the defaulting contractor from quoting against the risk purchase tender enquiry can be justified only when the breach consisted of his inability to supply goods of the contract description or when repurchase has to be effected on spot delivery in view of the urgency created consequent on default and it has been established that the defaulter cannot comply with this requirement. The exclusion of the defaulting firm will not, however, be justified in case the original contract was cancelled on account of his failure to delivery stores due to rejection in inspection on account of rectifiable defects in the stores tendered.

In all other cases, barring the exceptions indicated above, the defaulting firm have necessarily to be kept in the picture while effecting the risk purchase. Where risk purchase is to be effected by advertised tender a copy of the tender notice should be sent to the default informing him that the enquiry relates to repurchase of stores against the contract which was cancelled at his risk and expense. In case of repurchase by limited tender, a copy of the tender enquiry should be sent to him informing him of the position. Even in cases where repurchase is effected by local purchase by the indenter direct or by negotiations (which is rarely permissible in an extra ordinary situation) the defaulter should not be denied an opportunity to offer. Where the defaulter's quotation happens to be the lowest acceptable it should be accepted. In such contingency in order to guard against a second default, the defaulting firm should be called upon to furnish a security deposit equivalent to 10% of the total contract value.

(Para 239 and O.O. No. 112 of 1967).

[Please also see sub-para 4(d) below].

NOTE : According to legal opinion the exclusion of the defaulting firm from a risk purchase enquiry on the ground of their being blacklisted would prejudice our rights to recover the extra expenditure incurred in repurchase. Such firms should, therefore, be given an opportunity to quote against risk purchase enquiries. In case the quotation received from such a firm is not the lowest, we would be able to place the order on the lowest tenderer and recover the extra expenditure incurred. If, on the other hand, the quotation of the blacklisted firm happens to be the lowest, the case will have to be examined on merits and a decision taken in consultation with the Deptt. of Supply either to ignore or accept the offer.

[D.O. No. CSIB/15(1)/61, dated 23-9-1964].

4(d) *Security deposit to be taken from the defaulting firm in the event of placement of risk purchase order.*

According to clause 7 of the General Conditions of contract security deposit for due performance of contract can be called for prior to the acceptance of tender or after the acceptance. In case of risk purchase enquiries, if the quotation of the defaulting firm happens to be the lowest acceptable, they should be asked to furnish the security deposit equal to 10% of the proposed contract value within a target date with a clear warning that their offer will be ignored if the security amount is not furnished by the specified date. In the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract on the next best offer considered. While fixing the target date as indicated above, care should be taken to see that the other offers will be valid for acceptance upto a period beyond the target date so that placement of order on other tenderers may be considered in the event of failure of the defaulting firm to furnish the Security Deposit. It should, thus, be ensured that there is adequate margin between the target date set for furnishing the security deposit and the date of expiry of the validity of other tenders.

(Office Order No. 75 dated 12-7-67).

It may be noted that the delegation of powers for waiver of security deposit to be obtained from unregistered firms for due performance of contracts as contained in para 1(6) of the Deptt. of Supply letter No. 6(4)/66-PI dated 22-1-1967 as circulated under O.O. No. 132 dated 1967 will not be applicable in respect of cases where security deposit has to be obtained from defaulting contractors. In such cases the purchase officers have no discretion to waive the security deposit or to reduce its quantum. Any relaxation in these provisions would attract the sanction of the Deptt. of Supply.

It should also be noted that security deposit in the above type of cases should be called for even from registered suppliers.

(O.O. No. 87 dated 18-9-65).

4(e) In a risk purchase case lower tenders should not be ignored for any rectifiable errors of form such as non-submission of samples. This does not, however, mean that order should be placed on such firms even if they have not rectified the error inspite of giving an opportunity to do so by a target date.

(O.O. No. 80 dated 20-7-67)

4(f) The risk purchase enquiry must essentially be confined to the quantity in default of the individual contractor and there should not be any bulking of demands.

(O. O. No. 116 dated 9-12-61).

5. *Recovery of extra expenditure incurred in risk purchase.*

(a) Even though according to legal requirements, the recovery of risk purchase loss could be effected only after materialisation of supplies against the risk purchase contract, a demand notice should be served on the defaulting firm as soon as the risk purchase agreement is entered into asking them to deposit the extra expenditure involved. The standard letter circulated along with Office Order No. 67 dated 16-6-66 may be used for serving the said notice. Simultaneously action should also be taken to withhold payment(s), if any, due to the contractor against other contracts. In cases where we are able to withhold payment and the defaulting contractor challenges the recovery, we may leave it to him to refer the matter to arbitration or to initiate legal proceedings. In cases where we are unable to recover the amounts due by withholding payments or otherwise, arbitration/legal proceedings should be initiated in spite of the fact whether supplies against the risk purchase contract have materialised or not. Since the arbitration/legal proceedings are protracted, it may be that in most of the cases by the time we have to produce evidence, supplies against the risk purchase contract might materialise and we would be able to comply with the legal requirements. In cases where the risk purchase contract is not completed, we have to endeavour to produce evidence in regard to the market value of the stores on the date of breach and claim the general damages.

[Sub-para (f) of para 48-A of the Contract Manual].

5(b) *Recovery of risk purchase loss in cases where there is more than one default.*

Cases are not uncommon where the second contractor (*i.e.* the one on whom the risk purchase contract is placed) also fails to supply the stores and where risk purchase has to be arranged on his account. To give an illustration. Suppose we have entered into a contract with a contractor 'A' for supply of certain stores. 'A' fails to deliver the stores and the contract is cancelled and risk purchase agreement made with the another contractor 'B' at a higher price. 'B' also fails and a fresh risk purchase agreement is made with a third contractor 'C' still at a higher rate. 'C' supplies the stores. The question is as to what should be the quantum of damages to be recovered from 'A' and 'B' respectively. If the stores involved are of an ordinary commercial nature *i.e.* stores which are readily available in the market, we can legally recover from the contractor 'A' the difference between the rate at which the original contract was placed on him and the market rate on the date on which he committed the breach. So far as 'B' is concerned the actual extra expenditure incurred (*i.e.* the difference, between the rates of the contracts placed on 'B' and 'C' in risk purchase can be recovered. On the other hand, if the stores to be purchased are not of an ordinary commercial nature (*i.e.* stores to be fabricated according to our specification etc. and which have no ready market), we are legally entitled to recover from 'A' the difference between the contract price on him and that of 'B' and from 'B' the difference between the contract price on 'B' and that of 'C'.

[Para 48-A(b) of the Contract Manual].

(c) Maintenance of a Register to watch recoveries and to ensure place-ment of risk purchase contract within the time limit.

In order to maintain a careful watch to ensure that risk purchase is effected within the time limit prescribed and the recovery of extra expenditure on repurchase is not lost sight of, a register in the proforma prescribed in Office Order No. 71 dated 7-6-63 should be maintained by all the Supply Sections. As soon as a contract is cancelled at the risk and cost of a contractor the particulars regarding the contract should be entered into in the appropriate columns of the register. The register should be reviewed once a week by the Section Officer/Assistant Director concerned and should be put up to the Purchase Officer within whose powers the case falls including D.G. to keep him posted with the position of the case with a view to ensure that risk purchase is made within the minimum time possible but not later than the period of 6 months provided in the Conditions of Contract. If there is no entry to be watched, the register should be reviewed by the Section Officer/Assistant Director once a month.

As soon as the risk purchase agreement is placed, the particulars of this contract should be entered in the appropriate columns of the register and a careful watch kept till the amount due from the defaulting firm is recovered.

The O&M Section should examine the risk purchase registers maintained by the Sections at headquarters [Assistant Director (Admn.) in case of Regional offices] at regular intervals with a view to see that they are maintained properly and certify on the register after such examination that it is maintained in accordance with the existing instructions. They should bring to the notice of the Director of Supplies concerned in writing the defects, if any, detected by them during the course of their examination.

(Office Order No. 71 dated 7-6-63).

(d) Institution of arbitration/legal proceedings to effect recovery.

If recovery of extra expenditure incurred in risk purchase or the recovery of general damages cannot be effected within three months through normal action such as demand from firms, retrenchment from pending bills, etc. the case should be brought to the notice of the Director of Supplies who should consider institution of legal/arbitration proceedings.

(Office Order No. 34 dated 25-3-63).

6. General damages.

(a) As explained in the preceding paras, under the conditions of contract we are entitled to recover from the defaulting contractor the extra expenditure incurred in the event of cancellation of a contract and consequent risk purchase. However, where no repurchase is made or where repurchase is made deviating from the norms set out above are entitled to recover by way of compensation only, the sum by which the contract price falls short of the price for which the purchaser might have obtained goods of the like quality at the time when they ought to have been delivered. In other words the amount recoverable in such cases is the difference between contract rate and the market rate on the date of breach and this is what is called general damages in legal parlance.

6(b). Market rate on the date of breach-Ascertaining of

In order to ascertain the market rate it may not be necessary to issue a fresh enquiry. If the purchases of the same stores (in cases where store are

marketable) or stores which are best and nearest substitute of the stores originally contracted for (where stores are not marketable) has been made during the period just before or just after the date of breach, the rate established in such purchases should be taken as the market price. Even in cases where no such purchases are made, the market rate may be calculated on the basis of the lowest quotation received from *bona fide* sellers during that period. If the market rate cannot be ascertained by adopting the methods specified above, enquiries may be made from *bona fide* sellers as to whether they have made any transaction during the period and the price at which they sold the store. The price intimated by the sellers in such cases may be taken as an evidence of market rate. In cases where it is considered necessary to invite fresh tenders to ascertain the market rate no indication should be given in the tender enquiry that the contract is not likely to materialise. Such stipulation will prejudice our right for recovery of general damages if it could be proved that the rates thrown up as a result of the tender enquiry containing these remarks were fictitious and unrealistic.

(Office Order No. 43 dated 3-5-61 and

Office Order No. 142 dated 8-11-58)

6(c). *Case where repurchase is made for different quality of stores.*

Where repurchase is made for different quality of stores Government cannot recover from the defaulting firm the actual extra expenditure incurred in such purchase. Only general damages can be recovered in such cases. If the market price on the date of breach cannot be ascertained in such cases, they may be closed with the approval of (i) the Director General/Addl. D.G. if the value of the contract is up to Rs. 10,000 and (ii) with the approval of the Deptt. of Supply and Finance if the contract value is more than Rs. 10,000.

6(d). *Cases where no purchase is made.*

In cases where no repurchase is made after cancellation of the contract either due to withdrawal or reduction in demand by the Indentor, Government can recover only the general damages. Such cases will fall under the following two categories :

- (i) cases where the contractor has committed breach of contract wilfully and documentary evidence to prove such wilful negligence on his part is available, and
- (ii) cases where the contractor cannot be held responsible for the breach and non-supply of stores was due to reasons beyond his control.

With a view to decide whether the contract falls in any of the two categories mentioned above, the purchase officer should examine the case thoroughly in consultation with the Ministry of Law. As a result of such examination if it is revealed that there is wilful negligence on the part of the contractor, general damages should be claimed from him. Where security deposit is available it should be forfeited and set off against the general damages to be recovered. If the general damages to be recovered is more than the security available, action should be taken to recover the balance (*i.e.* the difference between the amount of general damages and the security deposit) amount.

In cases where no repurchase is made due to the withdrawal of the demand by the indentor, the general damages recovered should be credited

to DGS&D's account. However, where loss is reported by the indenter, the general damages should be credited into the indenter's account to the extent of the amount of loss.

If it is not possible to establish the claim for general damages the cases of the type at (i) above may be closed with the approval of (a) the Director General/Addl. D.G. if the value of the contract is upto Rs. 10,000/- and (b) the Deptt. of Supply and Finance if the value exceed Rs. 10,000 suggesting administrative action against the contractor wherever necessary. The cases falling under category (ii) may be closed with the approval of the purchase officer next higher to the one within whose powers of purchase the case falls in consultation with Finance.

(O. O. No. 43 dated 3-5-61 and O.O. No. 78 dated 30-6-62).

7. Forfeiture of security deposit in the event of cancellation of contract.

The entire security deposit taken for due performance of contract can be forfeited in the event of breach of contract by the contractor irrespective of the act whether or not the Government have sustained any loss on account of such breach. Forfeiture of security deposit does not prejudice Government's right to make risk purchase and recover damages on account of such risk purchase. In assessing the damages on account of such risk purchase, credit must, however, be given for the security deposit forfeited as above. In other words :

- (i) If the security deposit is available it should be forfeited and only the difference between the security deposit and the actual loss sustained on account of risk purchase recovered from the defaulter. In the event the loss exceeding the security deposit, the excess can be recovered from the contractor. The Government cannot, however, recover the full loss and also in addition forfeit the security deposit.
- (ii) If no security deposit is available the actual loss sustained on account of risk purchase or the general damages should be recovered.

(Para 50 of the Contract Manual).

8. Miscellaneous Provision.

(a) Extra freight and other incidental charges such as sales tax, cartage, packing charges, loading and unloading charges etc. which the purchaser may have to pay to the contractor, as extra charges incidental to the purchase, are recoverable from the defaulting contractor.

(Note 1 under para 239 of DGS&D Manual).

8(b). In respect of developmental stores, with a view to create more capacity and stipulate competition against future demands, educational orders may be placed on new firms provided they are found suitable in all respects and are willing to accept educational orders for small quantities. Such contracts can be cancelled without financial repercussion on either side if the firms are unable to complete the orders within a period of 6 to 8 months. These instructions, however, do not apply to those firms who have already established production of developmental stores on the basis of which 80% of the requirements of the stores are straightaway placed on them against open tenders.

[Office Order No. 95 dated 27-8-66 and Memo No. CSIA/49(95)/I dated 28-4-67].

8(c). Whenever a contract is cancelled and risk purchase arranged, the Supply Section concerned should advise the P&AO. by means of a letter the particulars of the original A/T against which the new contract has been placed and the difference in price recoverable from the defaulting contractor. Similarly while advising the P&AO. of the recovery to be made from the defaulting contractor, the Supply Section should also inform him of the particulars of the repurchase A/T in order to enable him to link the transactions.

(Routine Note No. 27 dated 9-6-1960).

8(d). Claim for risk purchase loss should not be normally enforced on Government establishments for failure to deliver stores against contracts placed on them. Serious cases of default should, however, be brought to the notice of the Head of the Department or the State Government concerned. Cases in which it is considered necessary to deviate from this rule should be referred to the Deptt. of Supply for approval.

The above provisions will not apply in respect of contracts placed on Government Undertakings as distinct from Government Establishments. Cases of this type would have to be decided on merits.

[Note 3 under para 233(1) of the DGS&D Manual].

8(e). The question of recovery of risk purchase loss against trial/educational orders etc. should be decided on the merits of each case taking into consideration the circumstances under which the order was placed.

8(f). If on re-examination of a case in the light of a representation of the firm against our decision, the intention is to reduce a portion of the Government's claim for risk purchase already imposed by the competent authority, the firm's representative should be sent for and asked orally to give a letter in writing that the firm would pay the said amount (*i.e.* the reduced amount) in full and final settlement of the claim for Risk Purchase. The intention of taking such a declaration is to avoid the contingency of the matter being referred to Arbitration etc. after we have communicated the decision to reduce the damages imposed. This is not to be disclosed to the firm and in case the firm refuse to give any such declaration the original decision should stand.

(Para 236 of the Manual).

9. Powers for cancellation and reinstatement of cancelled contracts and waiver of risk purchase loss.

(a) All cases of refusal of requests for extension in contract delivery date and cancellation of contracts should be decided in consultation with the next senior officer but not below the level of a Director of Supplies.

(b) Cases of reinstatement of cancelled contracts should be treated as contracts placed on negotiated basis.

Powers or waiver of risk purchase loss indicated below :—

(i) Director General—Loss up to Rs. 1,000/-.

(ii) Dy. Director General—Loss up to Rs. 100/-.

Cases where the loss incurred is more than Rs. 1,000/- would have to be referred to the Deptt. of Supply.

(Para 337 of the Manual).

It is also necessary to issue a formal sanction in cases where the extra expenditure incurred in risk purchase is waived.

Sd./-

Dy. Dir. (Odn. Supplies I)

Standard Distribution.

(On File No. CDN-2/9/(1)/I/68.

Recommendation

The Committee are unable to appreciate why the Directorate General of Supplies and Disposals entered into protracted correspondence with the firm after it had failed to supply the stores in time, considering that it is contrary to instructions in the Office Manual that no correspondence should be entered into when the contractor fails to supply the goods in time. Government should reiterate these instructions so as to avoid recurrence of such cases.

[S. No. 24 (Para 5.133) of Appendix VIII to the 21st Report (Fourth Lok Sabha)].

Action taken

Comprehensive instructions regarding Risk Purchase have been issued for the guidance of Purchase Officers in Office Order No. 11 dated 25-1-1968 as further clarified by Office Order No. 58 dated 19-4-1968. (Copies enclosed). The latter covers the recommendation made by the Public Accounts Committee.

Recommendation

The Committee would like to be informed of the results of the disciplinary aspect of the case which is stated to be under investigation by the Department of Supply.

[S. No. 24(Para 5.134) of Appendix VIII to the 21st Report (Fourth Lok Sabha)].

Action taken

The disciplinary aspect of the case has been finalised. The Deputy Director and the Assistant Director of Supplies concerned have been warned to be more careful in future. Copies of warnings have not been kept on the C.R. dossiers of the officers concerned.

Ministry of Works, Hosing and Supply, Department of Supply
New Delhi, the 29th November, 1968.

No. PI-43(14)/66.

GOVERNMENT OF INDIA

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

SECTION CDN—II

NEW DELHI

OFFICE ORDER NO. 11

Dated 25-1-1968

SUBJECT : Risk Purchase—Comprehensive Instructions reg.

All current existing instructions on the above subject have been consolidated upto date and are reproduced below for guidance of all concerned.

1. According to clause 14(7) of the General Conditions of Contract as contained in Form No. DGS&D-68(Revised) if the contractor fails to

deliver the stores or any instalment thereof within the period fixed for such delivery or at any time repudiates the contract before the expiry of such period, the Government is entitled to cancel the contract and to repurchase the stores not delivered at the risk and cost of the defaulting contractor. In the event of such a risk purchase, the defaulting contractor shall be liable for any loss which the Government may sustain on that account provided the purchase, or if there is an agreement to purchase, such agreement is made, in case of default to deliver the stores by the stipulated Delivery Period, within six months from the date of such default and in the case of repudiation of the contract before the expiry of the aforesaid delivery, within six months from the date of cancellation of the contract.

2. *Responsibility of the purchase officers to arrange risk purchase within the specified time limit.*

It is the responsibility of the purchase officers to ensure that risk purchase is effected within the time limit as specified above. Any loss that may occur on account of the delay on the part of the purchase officer to effect risk purchase within the specified time limit will render him liable to disciplinary action as also for recovery of the loss so sustained on account of his negligence/default. Even though six months time is provided, every endeavour should be made to effect repurchase within the shortest possible time without waiting for the completion of the six months period. This will save a lot of legal complications.

[Also see para 5(c)].

NOTE :—Repurchase within six months as indicated in para 1 above is enforceable only in cases where the default is on account of the contractor's failure to adhere to the contract delivery period or repudiation of contract before expiry of such period. In cases, however, where the contract is cancelled for reasons other than non-adherence of the contract delivery period or repudiation of the contract, repurchase should be effected immediately within a reasonable time.

(Para 239 of DGS&D Manual).

3. *Procedure to be followed by the purchase officers in regard to Cancellation of Contracts.*

The following procedure should be followed by the Purchase Officers in regard to cancellation of contracts :—

(a) The purchase officer should keep a careful watch on the date of delivery, keep himself fully informed as to what supplies have been made, what supplies are likely to be made by the date of delivery and what in general are the prospects of the contractor performing, the contract.

(b) Where delivery is specified in instalments, he should, wherever he is satisfied that performance is not likely to be forthcoming, cancel the instalments in default and call upon the contractor to execute the remaining part of the contract.

(c) In other cases (*i.e.* contracts stipulating delivery in one lot) where he consider it more expedient and is satisfied that performance is not likely to be forthcoming at all, he should cancel the entire contract or the quantity outstanding as on the date of expiry of the delivery period.

(d) Where it is intended to cancel a contract, it should be done immediately the breach has occurred. In certain cases decision is not, however, taken immediately on expiry of the delivery date or the extended

delivery date as the case may be, whether the contract should be cancelled or kept alive. Sometimes correspondence is exchanged with the firm after expiry of the delivery period thereby keeping the contract alive and by such action time ceases to be the essence of the contract. If time is to be made again the essence of the contract, we are required by law to give a notice to the contractor giving a reasonable time for performance and intimating him that time would be the essence of the contract. In such cases where the contract has been kept alive by the conduct of the parties, cancellation could be resorted to only after the expiry of the aforesaid notice period. It should be noted that the date for delivery fixed in such notice cannot be taken as the date of breach of the contract for counting the period of 6 months for the purchase of concluding the risk purchase contract unless it is accepted by the contractor either by correspondence or by making supplies. If the contractor does not accept the date either by repudiating it by correspondence or otherwise, the date of breach for the purpose of counting the six months period would be the date on which the original delivery period or the mutually agreed extended delivery period, if any, has expired.

(Routine Note No. 26 dated 4-4-67)

(e) When suppliers account their failure to supply the stores to non-availability of wagons on account of booking restrictions, the factual position should be ascertained from the Railway concerned and the Ministry of Law consulted before resorting to cancellation at the risk and cost of the contractor.

Ministry of Law should be consulted in all cases where there are doubts about our right to cancel the contract.

(f) In cases where security deposit is called for by a specified date, default in furnishing the same by the target date is in itself a breach of the contract which entitles the Government to cancel the contract at the risk and cost of the contractor.

(Para 49 of the Contract Manual).

4. Measures to be taken to effect risk purchase

(a) As soon as a contract is cancelled steps should be taken to effect repurchase if the stores are still needed.

(i) *Standby tenders* : The buyer's right to effect repurchase at the risk and cost of the seller arises only upon the breach of the contract by the seller. Hence the purchase officer should invite risk purchase tender only after the breach of the contract has occurred. In exceptional circumstances, however, where stores are most urgently required by the indentors and are not available from ready stock but have to be manufactured and some public harm would be caused by delay in supplies, standby tenders may be invited prior to the date of breach with a view to minimise the inconvenience that may be caused to the Government by the delay in performance of the contract. Issue of such standby tenders should, however, be restricted to cases of purchase of special class or kind of stores which are not readily available in the market and whose price is more or less stable over comparatively long periods of time. In other words standby tenders which are opened not longer than a month before the date of breach can be accepted. On the other hand, in case of stores whose price is liable to fluctuate from day to day, it will not be advisable to accept standby tenders opened a long time before the date of breach. If at all

it is found necessary in the public interest to accept a standby tender in such cases, such a tender should be the one opened only a few days before the date of breach. In any case it should be borne in mind that the cancellation of the contract on the defaulting supplier should precede the acceptance of the standby tender.

Note :—Contracts placed against operational, critical and other important Defence requirements where stores are to be manufactured according to Defence specification/drawing and some public harm would be caused by delays in supplies, should be considered as cases which would justify the invitation of standby tenders prior to the date of breach.

(ii) In cases other than those mentioned above, if it is considered to place risk purchase contracts on the basis of standby tenders for special reasons, approval of the Deptt. of Supply should be obtained since placement of order on the basis of standby tender would prejudice to the right of the Government to recover extra expenditure incurred in risk purchase.

[(Please also see Note under para 4(b) below].

(O. O. No. 112 dated 5-10-67).

4(b). Risk purchase to be on identical terms as the original contract

Risk purchase contract should be on the same terms (apart from the delivery time) as the original contract *i.e.* the goods should be of the same specification and liable to inspection by the same authority and the terms of payment, provision regarding liquidated damages, arbitration etc. should be the same. Where the original A/T provides for submission of a sample by the firm for testing prior to bulk supply, a similar condition should also be incorporated in the risk purchase contract. The intention is that the terms of the new contract should not be more onerous or more liberal than those of the original contract except to the extent of the time of supply *i.e.* much shorter time for supply of the stores would be permissible under the law, provided of course a reasonable time is given. If in exceptional circumstances it is necessary to depart from this rule, alternative quotations should be invited, one according to the terms of the original contract and the other according to revised requirements, the damages claimable being calculated on the basis of the legal advice obtained in each case.

It may also be added that even if the first purchase has been effected by negotiation or as a result of limited tender enquiry, the risk purchase contract should as far as practicable, be effected by advertised tender. This saves a lot of objections and is likely to help the Government in recovering the extra cost incurred. There is, however, no objection to effect repurchase by a limited tender enquiry since according to the conditions of contract the manner and method of such purchase will be in the entire discretion of the Secretary. It should however be borne in mind that the enquiry should not exclude any known suppliers.

Note :—Whenever risk purchase is effected either on the basis of the standby tenders or on the basis of negotiation, the Ministry of Law should be consulted regarding Government's right to recover the extra expenditure incurred in risk purchase. If the extra expenditure incurred is not legally recoverable, claim should be made for recovery of general damages. The rate established by the standby tenders may be taken as the market rate on the date of breach for the purpose of claiming the general damages provided the standby tenders are opened on the date of breach. Care should, therefore,

be taken in fixing the date of opening of standby tenders so that it synchronises with the likely date of breach in respect of the existing contract.

(Para 239 of DGS&D Manual and O.O. No. 112 dated 5-10-67—for details regarding general damages see para 6).

4(c). *Necessity to invite the defaulting firm to quote against the risk purchase enquiry*

While effecting risk purchase, exclusion of the defaulting contractor from quoting against the risk purchase tender enquiry can be justified only when the breach consisted of his inability to supply goods of the contract description or when repurchase has to be effected on spot delivery in view of the urgency created consequent on default and it has been established that the defaulter cannot comply with this requirement. The exclusion of the defaulting firm will not, however, be justified in case the original contract was cancelled on account of the his failure to deliver stores due to rejection in inspection on accounts of rectifiable defects in the stores tendered.

In all other cases, barring the exceptions indicated above, the defaulting firm have necessarily to be kept in the picture while effecting the risk purchase. Where risk purchase is to be effected by advertised tender a copy of the tender notice should be sent to the defaulter informing him that the enquiry relates to repurchase of stores against the contract which was cancelled at his risk and expense. In case of repurchase by limited tender, a copy of the tender enquiry should be sent to him informing him of the position. Even in cases where repurchase is effected by local purchase by the indenter direct or by negotiations (which is rarely permissible in an extra ordinary situation) the defaulter should not be denied an opportunity to offer. Where the faulters' quotation happens to be the lowest acceptable, it should be accepted. In such a contingency in order to guard against a second default, the defaulting firm should be called upon to furnish a security deposit equivalent to 10% of the total contract value. (Para 239 and O. O. No. 112 of 1967).

[Please also see sub-para 4(d) below].

Note :—According to legal opinion the exclusion of the defaulting firm from a risk purchase enquiry on the ground of their being blacklisted would prejudice our rights to recover the extra expenditure incurred in repurchase. Such firms should, therefore, be given an opportunity to quote against risk purchase enquiries. In case the quotation received from such a firm is not the lowest, we would be able to place the order on the lowest tenderer and recover the extra expenditure incurred. If, on the other hand, the quotation of the blacklisted firm happens to be the lowest, the case will have to be examined on merits and a decision taken in consultation with the Deptt. of Supply either to ignore or accept the offer.

(D.O. No. CSIB/15(1)/I/61 dated 23-9-64).

4(d). *Security deposit to be taken from the defaulting firm in the event of placement of risk purchase order.*

According to clause 7 of the General Conditions of contract security deposit for due performance of contract can be called for prior to the acceptance of tender or after the acceptance. In case of risk purchase enquiries, if the quotation of the defaulting firm happens to be the lowest acceptable, they should be asked to furnish the security deposit equal to 10% of the proposed contract value within a target date with a clear warning that their offer will be ignored if the security amount is not furnished by the specified date. In

the event of failure of the firm to furnish the security deposit by the specified date, their offer may be ignored and placement of the contract on the next best offer considered. While fixing the target date as indicated above, care should be taken to see that the other offers will be valid for acceptance up to a period beyond the target date so that placement of order on other tenderers may be considered in the event of failure of the defaulting firm to furnish the Security Deposit. It should, thus, be ensured that there is adequate margin between the target date set for furnishing the security deposit and the date of expiry of the validity of other tenders.

(Office Order No. 75 dated 12-7-67).

It may be noted that the delegation of powers for waiver of security deposit to be obtained from unregistered firms for due performance of contracts as contained in para 1(6) of the Deptt. of Supply letter No. 6(4)/66-PI dated 22-11-67 as circulated under O.O. No. 132 dated 1967 will not be applicable in respect of cases where security deposit has to be obtained from defaulting contractors. In such cases the purchase officers have no discretion to waive the security deposit or to reduce its quantum. Any relaxation in these provisions would attract the sanction of the Deptt. of Supply.

It should also be noted that security deposit in the above type of cases should be called for even from registered suppliers.

(O.O. No. 87 dated 18-9-65).

4(e). In a risk purchase case lower tenders should not be ignored for any rectifiable errors of form such as non-submission of samples. This does not, however, mean that order should be placed on such firms even if they have not rectified the error inspite of giving an opportunity to do so by a target date.

(O.O. No.80 dated 20-7-67).

4(f). The risk purchase enquiry must essentially be confined to the quantity in default of the individual contractor and there should not be any bulking of demands.

(O. O. No. 116 dated 9-12-61).

5. *Recovery of extra expenditure incurred in risk purchase.*

(a) Even though according to legal requirements, the recovery of risk purchase loss could be effected only after materialisation of supplies against the risk purchase contract, a demand notice should be served on the defaulting firm as soon as the risk purchase agreement is entered into asking them to deposit the extra expenditure involved. The standard letter circulated along with Office Order No. 67 dated 16-6-66 may be used for serving the said notice. Simultaneously action should also be taken to withhold payment(s), if any, due to the contractor against other contracts. In cases where we are able to withhold payment and the defaulting contractor challenges the recovery, we may leave it to him to refer the matter to arbitration or to initiate legal proceedings. In cases where we are unable to recover the amounts due by withholding payments or otherwise, arbitration/legal proceedings should be initiated inspite of the fact whether supplies against the risk purchase contract have materialised or not. Since the arbitration/legal proceedings are protracted, it may be that in most of the cases by the time we have to produce evidence, supplies against the risk purchase contract might materialise and we would be able to comply with the legal requirements. In cases where the risk purchase contract is not completed, we have to

endeavour to produce evidence in regard to the market value of the stores on the date of breach and claim the general damages.

(Sub-para (f) of para 48-A of the Contract Manual).

5(b). *Recovery of risk purchase loss in cases where there is more than one default*

Cases are not uncommon where the second contractor (*i.e.* the one on whom the risk purchase contract is placed) also fails to supply the stores and where risk purchase has to be arranged on his account. To give an illustration, suppose we have entered into a contract with a contractor 'A' for supply of certain stores. 'A' fails to deliver the stores and the contract is cancelled and risk purchase agreement made with the another contractor 'B' at a higher price. 'B' also fails and a fresh risk purchase agreement is made with a third contractor 'C' still at higher rate. 'C' Supplies the stores. The question is as to what should be the quantum of damages to be recovered from 'A' and 'B' respectively. If the stores involved are of an ordinary commercial nature *i.e.* stores which are readily available in the market, we can legally recover from the contractor 'A' the difference between the rate at which the original contract was placed on him and the market rate on the date on which he committed the breach. So far as 'B' is concerned the actual extra expenditure incurred (*i.e.* the difference between the rates of the contracts placed on 'B' and 'C' in risk purchase can be recovered. On the other hand, if the stores to be purchased are not of an ordinary commercial nature (*i.e.* stores to be fabricated according to our specification etc. and which have no ready market), we are legally entitled to recover from 'A' the difference between the contract price on him and that of 'B' and from 'B' the difference between the contract price on 'B' and that of 'C'.

[Para 48-A(g) of the Contract Manual].

(c) *Maintenance of a Register to watch recoveries and to ensure placement of risk purchase contract within the time limit*

In order to maintain a careful watch to ensure that risk purchase is effected within the time limit prescribed and the recovery of extra expenditure on repurchase is not lost sight of, a register in the proforma prescribed in Office Order No. 71 dated 7-6-63 should be maintained by all the Supply Sections. As soon as a contract is cancelled at the risk and cost of a contractor the particulars regarding the contract should be entered into in the appropriate columns of the register. The register should be reviewed once a week by the Section Officer/Assistant Director concerned and should be put up to the Purchase Officer within whose powers the case falls including D.G. to keep him posted with the position of the case with a view to ensure that risk purchase is made within the minimum time possible but not later than the period of 6 months provided in the conditions of Contract. If there is no entry to be watched the register should be reviewed by the Section Officer/Assistant Director once a month.

As soon as the risk purchase agreement is placed, the particulars of this contract should be entered in the appropriate columns of the register and a careful watch kept till the amount due from the defaulting firm is recovered.

The O & M Section should examine the risk purchase registers maintained by the Sections at headquarters (Assistant Director (Admn.) in case of Regional Offices) at regular intervals with a view to see that they are maintained properly and certify on the register after such examination

that it is maintained in accordance with the existing instructions. They should bring to the notice of the Director of Supplies concerned in writing, the defects, if any, detected by them during the course of their examination.

(Office Order No. 71, dated 7-6-63).

(d) *Institution of arbitration/legal proceedings to effect recovery :—*

If recovery of extra expenditure incurred in risk purchase or the recovery of general damages cannot be effected within three months through normal action such as demand from firms, retrenchment from pending bills, etc. the case should be brought to the notice of the Director of Supplies who should consider institution of legal/arbitration proceedings.

(Office Order No. 34, dated 25-3-63).

6. *General damages.*

(a) As explained in the preceding paras. under the conditions of contract we are entitled to recover from the defaulting contractor the extra expenditure incurred in the event of cancellation of a contract and consequent risk purchase. However, where no repurchase is made or where repurchase is made deviating from the norms set out above we are entitled to recover by way of compensation only, the sum by which the contract price falls short of the price for which the purchaser might have obtained goods of the like quality at the time when they ought to have been delivered. In other words the amount recoverable in such cases is the difference between contract rate and the market rate on the date of breach and this is what is called general damages in legal parlance.

6(b). *Market rate on the date of breach—Ascertaining of :*

In order to ascertain the market rate it may not be necessary to issue a fresh enquiry. If the purchases of the same stores (in cases where stores are marketable) or stores which are best and nearest substitute of the stores originally contracted for (where stores are not marketable) has been made during the period just before or just after the date of breach, the rate established in such purchases should be taken as the market price. Even in cases where no such purchases are made, the market rate may be calculated on the basis of the lowest quotation received from *bona fide* sellers during that period. If the market rate cannot be ascertained by adopting the methods specified above, enquiries may be made from *bona fide* sellers as to whether they have made any transaction during the period and the price at which they sold the store. The price intimated by the sellers in such cases may be taken as an evidence of market rate. In cases where it is considered necessary to invite fresh tenders to ascertain the market rate no indication should be given in the tender enquiry that the contract is not likely to materialise. Such a stipulation will prejudice our right for recovery of general damages if it could be proved that the rates thrown up as a result of the tender enquiry containing these remarks were fictitious and unrealistic.

(Office Order No. 43, dated 3-5-61; and Office Order No. 142, dated 8-11-58).

6(c) *Cases where repurchase is made for different quality of stores :*

Where repurchase is made for different quality of stores Government cannot recover from the defaulting firm the actual extra expenditure incurred

in such purchase. Only general damages can be recovered in such cases. If the market price on the date of breach cannot be ascertained in such cases, they may be closed with the approval of (i) the Director General/Addl. D.G. if the value of the contract is up to Rs. 10,000/- and (ii) with the approval of the Deptt. of Supply and Finance if the contract value is more than Rs. 10,000/-.

6(d). *Cases where no repurchase is made :*

In cases where no repurchase is made after cancellation of the contract either due to withdrawal or reduction in demand by the Indentor, Government can recover only the general damages. Such cases will fall under the following two categories :—

- (i) Cases where the contractor has committed breach of contract wilfully and documentary evidence to prove such wilful negligence on his part is available, and
- (ii) Cases where the contractor cannot be held responsible for the breach and non-supply of stores was due to reasons beyond his control.

With a view to decide whether the contract falls in any of the two categories mentioned above, the purchase officer should examine the case thoroughly in consultation with the Ministry of Law. As a result of such examination if it is revealed that there is wilful negligence on the part of the contractor, general damages should be claimed from him. Where security deposit is available it should be forfeited and set off against the general damages to be recovered. If the general damages to be recovered is more than the security available, action should be taken to recover the balance (*i.e.* the difference between the amount of general damages and the security deposit) amount.

In cases where no repurchase is made due to the withdrawal of the demand by the indentor, the general damages recovered should be credited to DGS&D's account. However, where loss is reported by the indentor, the general damages should be credited into the indentor's account to the extent of the amount of loss.

If it is not possible to establish the claim for general damages the cases of the type at (i) above may be closed with the approval of (a) the Director General/Addl. D.G. if the value of the contract is up to Rs. 10,000 and (b) the Deptt. of Supply and Finance if the value exceeds Rs. 10,000 suggesting administrative action against the contractor, wherever necessary. The cases falling under category (ii) may be closed with the approval of the purchase Officer next higher to the one within whose powers of purchase the case falls in consultation with Finance.

(O.O. No. 43, dated 3-5-61; and O.O. No. 78, dated 30-6-62).

7. *Forfeiture of security deposit in the event of cancellation of contract :*

The entire security deposit taken for due performance of contract can be forfeited in the event of breach of contract by the contractor irrespective of the fact whether or not the Government have sustained any loss on account of such breach. Forfeiture of security deposit does not prejudice Government's right to make risk purchase and recover damages on account of such risk purchase. In assessing the damages on account of such risk purchase, credit

must, however, be given for the security deposit forfeited as above. In other words :

- (i) If the security deposit is available it should be forfeited and only the difference between the security deposit and the actual loss sustained on account of risk purchase recovered from the defaulter. In the event loss exceeding the security deposit, the excess can be recovered from the contractor. The Government cannot, however, recover the full loss and also in addition forfeit the security deposit.
- (ii) If no security deposit is available the actual loss sustained on account of risk purchase or the general damages should be recovered.

(Para 50 of the Contract Manual).

8. *Miscellaneous Provision :*

(a) Extra freight and other incidental charges such as sales tax, cartage, packing charges, loading and unloading charges etc. which the purchaser may have to pay to the contractor as extra charges incidental to the purchase, are recoverable from the defaulting contractor.

[Note (1) under para 239 of DGS&D Manual].

8. (b) In respect of developmental stores, with a view to create more capacity and stipulate competition against future demands, educational orders may be placed on new firms, provided they are found suitable in all respects and are willing to accept educational orders for small quantities. Such contracts can be cancelled without financial repercussion on either side if the firms are unable to complete the orders within a period of 6 to 8 months. These instructions, however, do not apply to those firms who have already established production of developmental stores on the basis of which 80% of the requirements of the stores are straightaway placed on them against open tenders.

[Office Order No. 95, dated 27-8-66; and Memo. No. CSIA/49(95)/I, dated 28-4-67].

8. (c) Whenever a contract is cancelled and risk purchase arranged, the Supply Section concerned should advise the P&AO. by means of a letter the particulars of the original A/T against which the new contract has been placed and the difference in price recoverable from the defaulting contractor. Similarly while advising the P&AO. of the recovery to be made from the defaulting contractor, the Supply Section should also inform him of the particulars of the repurchase A/T in order to enable him to link the transactions.

(Routine Note No. 27, dated 8-6-1960).

8. (d) Claim for risk purchase loss should not be normally enforced on Government Establishments for failure to deliver stores against contracts placed on them. Serious cases of default should, however, be brought to the notice of the Head of the Department or the State Government concerned. Cases in which it is considered necessary to deviate from this rule should be referred to the Deptt. of Supply for approval.

The above provisions will not apply in respect of contracts placed on Government Undertakings as distinct from Government Establishments. Cases of this type would have to be decided on merits.

[Note 3 under para 233(1) of the DGS&D Manual].

8. (e) The question of recovery of risk purchase loss against trial/educational orders etc. should be decided on the merits of each case taking into consideration the circumstances under which the order was placed.

8. (f) If on re-examination of a case in the light of a representation of the firm against our decision, the intention is to reduce a portion of the Government's claim for risk purchase already imposed by the competent authority, the firm's representative should be sent for and asked orally to give a letter in writing that the firm would pay the side amount (*i.e.* the reduced amount) in full and final settlement of the claim for Risk Purchase. The intention of taking such a declaration is to avoid the contingency of the matter being referred to Arbitration etc. after we have communicated the decision to reduce the damages imposed. This is not to be disclosed to the firm and in case the firm refuse to give any such declaration the original decision should stand.

(Para 236 of the Manual).

9. Powers for cancellation and reinstatement of cancelled contracts and waiver of risk purchase loss.

(a) All cases of refusal of requests for extension in contract delivery date and cancellation of contracts should be decided in consultation with the next senior officer but not below the level of a Director of Supplies.

(b) Cases of reinstatement of cancelled contracts should be treated as contracts placed on negotiated basis.

(c) Powers for waiver of risk purchase loss indicated below:—

(i) Director General—Loss up to Rs. 1,000/-

(ii) Dy. Director General—Loss up to Rs. 100/-

Cases where the loss incurred is more than Rs. 1,000/- would have to be referred to the Deptt. of Supply.

(Para 337 of the Manual).

It is also necessary to issue a formal sanction in cases where the extra expenditure incurred in risk purchase is waived.

Dy. Director (CDN. Supplies I)

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

SECTION CDN—2

NEW DELHI

OFFICE ORDER NO. 58

Dated 19-4-1968.

SUBJECT :—*Cancellation of contracts—Necessity for avoiding correspondence with the suppliers after expiry of the contract delivery period.*

REFERENCE : Office Order No. 11 dated 25-1-1968

The procedure to be followed by the Purchase Officers in regard to cancellation of contracts is outlined in para 3 of the Office Order No. 11 dated 25-1-1968 referred to above. It has been provided therein that where it is intended to cancel a contract, it should be done immediately

the breach has occurred. The breach in case of a contract for supply of store occurs in the event of failure to deliver the stores by the date of delivery stipulated in the contract or in the event of repudiation of the contract earlier. Entering into correspondence with the firms after the breach, has the effect of keeping the contract alive. This will create complications as immediate cancellation of the contract will not be possible in that case, as indicated in para 3(d) of Office Order No. 11 dated 25-1-1968. The purchase sections should not, therefore, enter into correspondence with the firms after the breach of the contract unless it is intended to keep the contract alive.

2. Instructions already exist to the effect that inspectors should not inspect stores tendered after the expiry of the contract delivery period unless delivery period has been extended by the Purchase Officers. The inspectors should also not enter into correspondence with the firms after the expiry of the delivery dates stipulated in the contracts.

All concerned are requested to note the above instructions.

Sd./-
Deputy Director (CS-1)

Recommendation

"The Committee are unhappy to note that Government had to incur a loss of Rs. 40,200/- in this case on account of demurrage charges due to lapses and delays in the office of the Director General, Supplies and Disposals. Since consignments by ships are received frequently by the Directorate General, Supplies and Disposals the Committee suggest that various lapses that occurred in this case may be analysed carefully to remove any lacuna in the procedure. The instructions issued in this connection may be brought to the notice of all the officers so that such cases do not recur".

Sl. No. 25 (Para 5.143) of Appendix VIII to the 21st Report (Fourth Lok Sabha).

Action taken

An analysis of the lapses in the case revealed that delay in payment of freight charges of the Clearing Agents and consequent payment of demurrage charges occurred mostly because of the lack of clear instructions in the contract regarding payment of Ocean freight. Based on the experience of this case, procedural lacuna was removed by issuing instructions as contained in DGS&D Office Order No. 1 dated 14-1-1965 (Annexure I) which provided that a clear stipulation with regard to the payment of ocean freight in rupees in India by the P&AO should be made in FAS contracts. These instructions were reiterated in DGS&D Office Order No. 23 dated 15-3-67 (Annexure II) urging upon the Purchase Officers to incorporate specifically a clause in contracts regarding payment of ocean freight.

In regard to the supply of stores ex-U.S.A. on F.O.B. basis, detailed instructions have been issued in DGS&D Office Order No. 36 dated 28-4-67 (Annexure III) on the basis of instructions issued by the Ministry of Transport and Shipping. This Office Order *inter-alia* incorporates necessary instructions regarding payments of ocean freight. Further, with a view to avoid delay in clearance of stores by Port Shipping Officers and payment of consequential demurrage charges, further instructions have been issued in DGS&D Office Order No. 50, dated 7-6-67 (Annexure IV).

With the issue of these detailed instructions, it is expected that cases of the type referred to in this Audit Para will not recur.

Recommendation

"The Committee may also be informed of the action taken against the officers found responsible for these lapses."

S. No. 25 (Para 5.144) of Appendix VIII to the 21st Report (Fourth Lok Sabha).

Action taken

In the case of officials of DGS&D, warnings have been issued to four officials and in the case of three of them copies of warnings have been placed in their CR also. As regard the officials of the Chief Pay and Accounts Officer the matter has been referred to the C. & A.G. for such action as may be considered appropriate.

[Ministry of Works, Housing & Supply (Department of Supply)]

NEW DELHI :

6th December 1968

No. 43(9)/66-PI.

ANNEXURE I

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

(COORDINATION SUPPLIES SECTION IB)

NEW DELHI

OFFICE ORDER NO. 1

Dated 14-1-1965.

SUBJECT :—*Contracts placed on FOB/FAS basis stipulation of a clause regarding payment of ocean freight.*

No provision regarding payment of Ocean freight is at present made in contracts for supply of imported stores concluded on FOB/FAS basis. In the absence of any such provisions the paying authorities at the ports of clearance are experiencing difficulties in making payment and raising necessary debits subsequently against the Accounts Officers of the indentors. With a view to overcome these difficulties it has been decided that the following clause should be stipulated in all contracts to be concluded on FOB/FAS basis in future :—

'In case payment of Ocean freight is to be made in rupees in India the same will be paid by the P&AO., Department of Supply. (Here mention the Port of clearance viz. Bombay, Calcutta or Madras as the case may be) on receipt of the bills of the Steamer Agents through the Assistant Director (Shipping) Dte. of Supplies & Disposals (Bombay, Calcutta or Madras as the case may be) and raise necessary debits against the indentor's Accounts Officer as shown in clause. of the schedule to A/T.'

2. In such cases a copy of the A/T should be sent to the P&AO concerned duly authenticated.

Sd/-

Deputy Director (CS-II)

ANNEXURE II**DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
NEW DELHI
CSIB**

OFFICE ORDER NO. 23.

Dated 15-3-67.

SUBJECT :—*Contracts placed on FOB/FAS basis—Stipulation of provision relating to payment of Ocean freight.*

Instructions already exist in O.O. No. 1 dated 14-1-65 to the effect that the following clause regarding payment of ocean freight should be stipulated in all contracts to be placed on FOB/FAS basis :—

'In case payment of Ocean freight is to be made in rupees in India the same will be paid by the P&AO., Department of Supply..... (Here mention the port of clearance viz. Bombay, Calcutta or Madras as the case may be) on receipt of the bills of the Steamer Agents through the Assistant Director (Shipping) Dte. of Supplies & Disposals..... (Bombay, Calcutta or Madras as the case may be) and raise necessary debits against the indenter's Accounts Officers as shown in clause..... of the schedule to A/T'.

It has been reported by DS&D (shipping branch) Madras that the provision for payment of ocean freight by Pay & Accounts Officer, Madras in respect of cargoes to be cleared by him is not made in a number of contracts on FOB/FAS basis placed by Supply Sections at Headquarters and Regional Offices. All Supply Sections are therefore again requested to ensure that the clause as indicated above is incorporated in all such contracts.

Sd/-

Deputy Director (CS-II)

Standard Distribution

On File No. CSIB/II(14)/I/65.

Copy to the Assistant Director (Shipping), Dte. of Supplies & Disposals, Madras—This has reference to his discussion on the subject with Director O&M and CDN.

ANNEXURE III**DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
(COORDINATION SUPPLIES SECTION IB)
NEW DELHI-1**

OFFICE ORDER NO. 36

Dated 28-4-67

SUBJECT :—*Shipping arrangements for import of Government Cargoes from U.S.A.*

In supersession of all the existing instructions, the following procedure is laid down in regard to shipping arrangements, payment of freight charges

L2:LSS/69--7

etc. in respect of stores to be imported from U.S.A. against contracts placed by DGS&D on F.O.B./F.A.S. basis :

- (a) The India Supply Mission, Washington will be shown as the Shipper in respect of all shipments from U.S.A. arranged by the Shipping Coordination Committee in the Ministry of Transport & Shipping. Copies of all such contracts and amendments thereto should, therefore, be endorsed both to the Shipping Coordination Committee, Ministry of Transport & Shipping and to the India Supply Mission, Washington.
- (b) Payment of freight in respect of non-Indian vessels will be arranged by the Chief Accounts Officer, India Supply Mission, Washington. The freight bills for such payments from the Shipping Lines will be received by M/s. Dyson Shipping Company, New York (Government of India's Freight Forwarders) who will pass them on to the Shipping Liaison Officer, New York for certification and transmission to the Chief Accounts Officer to the India Supply Mission, Washington.
- (c) Payment of freight to owners of Indian Vessels will be arranged by the Pay & Accounts Officer, Department of Supply, Bombay. In such cases also the freight bills will be received by the Freight Forwarders and will be forwarded for certification to the Shipping Liaison Officer who will send the bills to the P&AO., Bombay.

2. Specimen clauses to be incorporated hereafter in tender enquiries and contracts in case of FOB/FAS contracts for import of stores from U.S.A. are given in Annexure to this order.

3. The particulars regarding the following should invariably be incorporated in contracts for purposes of shipment.

- (i) Marine Insurance instructions. Ordinarily Government goods are not insured as a matter of policy. However, where the indenter desires insurance of the cargoes as a special case, he should obtain an open/general policy with the Life Insurance Corporation of India and indicate the particulars of the policy, nature of coverage required, in the Indent for incorporation in the Contract. In the absence of such particulars, no Insurance would be arranged.
- (ii) Designation and address of the Intermediate or the Port Consignee.
- (iii) The manner in which it is desired that the ocean bills of lading should be drawn (Instructions regarding Clearing Agents).
- (iv) Mode of financing (Loan Number etc.) and flag requirements, if any.

4. The shipping clauses applicable to FOB/FAS and FOR/CIF contracts in vogue at present are those contained in Office Order No. 156 dated 18-12-66 and O.O. No. 101, dated 9-9-66 as amended by Office Order No. 27, dated 3-4-67. In view of the instructions contained in Paras 1 to 3 above, the penultimate sentence in the shipping clause 'for FOB/FAS contracts as contained in O.O. No. 156, dated 18-12-66 (*viz.* In case of shipmentsshipping instructions) may be deleted. So far as purchases from U.S. are concerned the clauses specified in the Annexure to this order

should be incorporated in all cases where contracts are placed on FOB/FAS basis.

5. The shipping clause for CIF/FOR contracts prescribed in Office Order No. 101, dated 9-9-66 as amended by O.O. No. 27, dated 3-4-1967 remain unaltered.

Deputy Director (CS-II)

Standard Distribution

On file No. CSIB/61(1)/I/66

Copy to the Department of Supply with reference to their OM No. F.II-6(21)/64, dated 13-1-1966 and U.O. No. Dy. 2830/011/67, dated 20-4-67 with 4 spare copies, along with four copies each of office order Nos. 101, and 156, dated 9-9-66, and 18-12-66 respectively.

2. Import & Shipping Section with a copy of Ministry of Transport OM No. 2 S.C. II(1) 65, dated 17-12-1965.

3. Ministry of Transport & Shipping with reference to their U.O. No. 2-S(II)(1)/67, dated 12-4-67.

ANNEXURE

1. *Shipping* : Shipping arrangements will be made by the Secretary, Shipping Coordination Committee, Ministry of Transport & Shipping (Telegraphic address Transchart, New Delhi) or his nominee through their forwarding agents M/s. Dyson Shipping Co., Inc., 17 Battery Place, New York, (NY 100049 Phone HA 2-5200) who will arrange the shipping space required and handle the distribution of documents. India Supply Mission, Washington will be shown as the shipper in all cases and indicated as such in all Bills of Lading. Export licences from the American authorities wherever required will be obtained by the India Supply Mission, Washington. If India Supply Mission bulk licence cannot be utilised *i.e.* in cases where ultimate consignee is a Public undertaking U.S. Export licence will be obtained by India Supply Mission.

2. *Packing* : Unless otherwise specified in the contract, all items ordered should be processed and packed suitably for export to India.

3. *Packing Lists* : The contractor shall insert in each case a packing list, fully itemised to show the case number, contents, gross and net weight and cubic measurement. Ten copies of each packing list shall be supplied to the Freight forwarders M/s. Dyson Shipping Co., New York as provided in clause 6 below.

4. *Marking* : Each case shall have shipping marks (marking to be indicated) stencilled on two opposite sides and on the top. In addition, the gross weight, net weight and cubic measurements should also be indicated on the packages. The marks shall also be shown on invoices, packing lists and on Railroad bill of lading, Express receipts or Mailing certificates exactly as they appear on the cases.

5. *Invoices* : Unless otherwise specified 15 copies of the invoices shall be prepared on the contractor's test and inspection and conforms in every respect to the contract specifications and is packed in accordance with the contract packing requirements.

- (i) The material covered by the invoice has passed the contractor's test and inspection and conforms in every respect to the contract specifications and is packed in accordance with the contract packing requirements.
- (ii) The invoice is correct in every particular and no other invoice (except proforma invoices) has been rendered previously in respect to the articles now charged hereon. The original copy of the invoice should be signed in ink by the contract or his authorised agent. Copies 1 to 14 of the invoices shall be distributed as provided in clause 6 below and the 15th copy retained by the contractor for his use.

6. *Distribution of Documents.* The contractor shall send 10 copies each of packing list and invoices to the freight forwarders, when the material is ready for despatch. On these copies of the invoices should be indicated clearly 'Material held by us awaiting shipping instructions.' The remaining 4 copies of the invoices and 4 additional copies of the Packing lists should be sent to the Chief Accounts Officer, I.S.M., Washington as soon as the stores are despatched in accordance with the instructions issued by the freight forwarders. The relevant documents in evidence of despatch as indicated in clause 8 should accompany these copies. In cases where letters of credit have been opened these documents are to be sent to the concerned Bank.

7. *Advice of readiness of shipment.* The freight forwarders should be given adequate notice of not less than six weeks of readiness of shipment in order to enable them to arrange shipping space. The documents referred to in clause 6 above should accompany such notice. The freight forwarders will then promptly call forward the shipment.

8. *Advice of Despatch :* When the stores have been despatched following receipt of freight forwarders 'despatch instructions' the contractor shall submit to the Chief Accounts Officer, I.S.M., Washington or to the concerned Bank (in case of payment through letters of credit) the following documents as evidence of despatch :

- (i) In case of FOB Plant and Inland Port of shipment common carrier bill of lading on freight shipment, express receipt on express shipment or certificates of mailing on parcel post shipment.
- (ii) In case of FOB/FAS Port of Export shipment clean dock or ship's receipt.

9. *Forwarding of shipping documents etc. to the port consignee :*

A shipment advice should be sent to the port consignee by telegram or letter within 3 days of shipment. The following documents required for clearance of stores at Indian Port should be sent to the Port consignee *via* within 7 days of the ship leaving the overseas port :

- (i) Original copy of the bill of lading.
- (ii) Copy of the bill of lading showing ocean freight charges/ freight sheets.
- (iii) signed invoices showing the value and the name, of the port consignee. The invoices should indicate the various types of commission/discount if any, allowed so that there is no delay in assessing correct values for levying customs duty.

- (iv) Packing lists showing individual dimension and weight of the packages.
- (v) Country of origin certificates.
- (vi) Insurance report (where stores are insured).
- (vii) Drawings or sketches (to plan) showing outside dimensions for all oversized packages which fall outside the standard moving dimensions so that movement can be planned before the consignment arrives.

ANNEXURE IV

GOVERNMENT OF INDIA
DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS
 (COORDINATION SUPPLIES SECTION IB)
 NEW DELHI-1

OFFICE ORDER NO. 50

Dated 7-6-1967

SUBJECT :—*Contracts for purchase of imported stores—Steps to be taken to avoid delay in clearance of stores by Port Shipping Officers.*

REFERENCE :—*Office Order No. 106, dated 17-9-66.*

Instructions already exist in the Office Order referred to above as to the steps to be taken to avoid delay in clearance of stores, where clearance at the port of discharge is entrusted to Director of Supplies & Disposals, Bombay/Calcutta Madras. The following are the measures to be taken :

- (i) Copy of the A/T and amendments thereto should be sent to the port shipping Officer concerned whose full designation, postal and telegraphic address should be indicated in the contract.
- (ii) Indentors who are exempted from payment of customs duty (*viz.* Scientific laboratories under CSIR, Defence Research Organisation etc.) should be instructed to send Duty Exemption Certificate along with 'Not Manufactured in India' certificate to the Port Shipping Officer immediately after the placement of the contract.
- (iii) Pre-deposit parties should be categorically informed that clearance work on their behalf will not be undertaken unless they maintain adequate revolving deposit with the Customs House/Pay & Accounts Officer concerned.

In regard to (ii) and (iii) above specific stipulation should be made in the copy of the A/T in the form of an endorsement intended for the indentor/consignee.

2. The contracts shall also specify that the seller sends to the Port Shipping Officer :

- (i) A shipment advice by telegram or Air Mail letter within 3 days of shipment.
- (ii) The following documents required for clearance at the Indian Port within 7 days of the ship leaving the overseas port :
 - (a) Original copy of the bill of lading.

- (b) Copy of the bill of lading showing ocean freight charges/ freight sheets.
- (c) Signed invoices showing the value and the name of the port consignee. The invoices should indicate the various types of commission/discount, if any, allowed so that there is no delay in assessing the correct values for the purpose of levying customs duty. The invoices should be prepared in terms of Customs tariff.
- (d) Packing lists showing individual dimension and weight of packages.
- (e) Country of origin certificates.
- (f) Insurance report (where stores are insured).
- (g) Drawings or sketches (to plan) showing outside dimensions for all oversized packages which fall outside the standard moving dimensions so that movement can be planned before the consignment arrives.

3. In addition to the above, the A/T should contain clear instructions as to the responsibility for payment of ocean freights stevedoring charges and inland railway freight. If consignments to be inspected at docks before despatch to the consignee, a clear stipulation should be made in the contract as to the type of inspection required. Indentor's/Consignee's representative should be present for inspection, surveys etc., whenever larger consignments are being cleared at the ports.

4. In cases where contracts are placed on CIF/C&F terms and where clearance is entrusted to our port shipping officers, the firms should be asked to send to the concerned port shipping officer the copy of the import licence required or clearance well ahead of the arrival of the vessel.

5. It may be mentioned here that the standard shipping clauses circulated under Office Order No. 36, dated 28-4-67 and O.O. No. 49, dated 6-6-67 already stipulated that the contractor should send to the Port Shipping Officer the documents as required in para 2 above. The Purchase Officers should ensure that appropriate shipping clauses are incorporated in the contracts placed by them. They should also strictly adhere to the instructions contained in paras 1, 3 and 4 above. Non-compliance of these instructions may result in delay in clearance of stores with the possibility of incurring demurrage charges. It may be noted that the officers responsible for non-compliance of these instructions will be held liable for any loss sustained on this accounts.

Sd/-

Deputy Director (CS-II)

Standard Distribution

(On File No. CSIB/61(1)/I/61)

Copy to : IS-I

Recommendation

"The Committee understand from Audit that the firm did contest on 14th May, 1965 the incorporation of the price preference clause in the acceptance of tender and the DG S&D, while giving the formal extension of time to the firm up to 1st January, 1966 given retrospectively on 20th May, 1966, clearly stated that it was without 'Liquidated damages' and

also deleted the price preference clause from the acceptance of tender. They hope that the circumstances in which the prior acceptance of the firm regarding the provisions of recovery of price difference was not obtained and later, while deleting the relevant clause from the acceptance of tender, the formal extension of time was also given 'without liquidated damages' will be investigated with a view to fix responsibility and to remove any lacuna in the existing procedure."

S. No. 26 (Para 5.151) of Appendix VIII to the 21st Report (4th Lok Sabha)

Action taken

The disciplinary proceedings have been concluded and the penalty of 'Censure' has been imposed on the official concerned. Copy of the order communicating the penalty of censure is also being placed in the C.R. dossier of the official.

There is no lacuna in the existing procedure. Instructions regarding incorporation of price preference clauses and levy of liquidated damages etc. are quite clear.

Comprehensive instruction regarding liquidated damages have been reiterated *vide* Office Order No. 47, dated the 30th March, 1968 (copy enclosed) for guidance and compliance of the Purchase Officers.

Ministry of Works, Housing & Supply
(Department of Supply)

New Delhi :

the 7th October, 1968

No. 43(25)/66-PI

DIRECTORATE GENERAL OF SUPPLIES & DISPOSALS

(Section CDN-II), NEW DELHI-1

OFFICE ORDER NO. 47

Dated 30-3-1968

SUBJECT : *Liquidated damages—Comprehensive instructions regarding.*

According to clause 14(4) of the General Conditions of Contract as contained on form No. DGS&D-68 (Revised), the time for and the date of delivery of the stores stipulated in the contract shall be of the essence of the contract, it is required that delivery must be completed by the stipulated date. The contract comes to an end on the failure of the seller to deliver acceptable stores by the stipulated date and the purchaser may refuse to take delivery of stores offered after the said date. If delivery is taken unconditionally after the stipulated date of delivery, it is presumed in law that the agreement as to the time being of the essence of the contract has been waived and the purchaser is not then entitled to claim any damages for delay in delivery. Where, however, the purchaser accepts the delivery after due date with a notice to the seller that he would claim damages for delay, the former is legally entitled to claim the damages. The purpose of the aforesaid notice is served by the standard letter (form No. DGS&D-160) issued by us for granting extension in contract delivery period. It will be noticed from what has been stated above that acceptance of stores after the agreed delivery date without giving a notice to the seller of the intention to claim damages for late delivery puts an end to the right to claim such damages.

(Based on para 45 of the Contract Manual)

2. *What is liquidated damages ?*

The Conditions of Contract (form No. DGS&D-68 Revised) in clause 14(7)(i) provide for damages for late delivery as liquidated damages. The clause stipulates that in the event of late delivery of stores, the purchaser is entitled to recover from the contractor by way of liquidated damages, a sum equal to 2% of the price of the stores delivered late.

2.2. It should be noted that liquidated damages accrue only in cases of delay in supplies. Where no supplies have been made under a contract, we can, upon cancellation of the contract or part thereof, as the case may be, recover the damages occasioned thereby *i.e.* either recover the general damages or the extra expenditure incurred in risk purchases. This is so even in cases where the cancellation was preceded by one or more extensions of delivery paried with reservation of right to recover liquidated damages. The reservation does not mean that by the mere fact of asking for extension in time the seller has made himself liable to pay the liquidated damages. It only means that the seller is promising to perform and that the buyer is agreeable to make supplies beyond the original delivery period, but the buyer imposes a condition that in view of the delay, he will take besides the goods, compensation for the delay also at the specified rate (*i.e.* 2% per month). The reservation for liquidated damages ceases to operate when the contract is ultimately broken in whole or in part, to the extent of the breach.

3.1. *Quantum of liquidated damages recoverable in case of delay in supplies.*

Though the General Conditions of Contract, as stated above, provides for recovery of liquidated damages at the rate of 2% per month in respect of delayed supplies, all that we can recover from the supplier according to law, is only a reasonable compensation not exceeding the amount specified. The very fact that the liquidated damages clause in the general conditions of Contract is incorporated automatically in every contract, in itself precludes its being treated as a genuine pre-estimate of damages. It, therefore, follows that what we can recover in such cases is only losses actually sustained due to delay in supplies subject to the limit of 2% specified in the general conditions of Contract. Where, however, there is no demonstrable actual loss on account of delay in supplies, but liquidated damages are to be levied, these may ordinarily be limited to 10% of the liquidated damages leviable at the rate of 2%.

3.2. It may also be noted in this connection that according to law the general measure of damages for late delivery of stores is the difference between the value of the stores on the date fixed for delivery and their value when delivered (*i.e.* the market price). Where there is no market for the stores, their value is the price of the best substitute procurable. If the particular goods or their nearest substitute is not procurable or actually procured, the seller is liable for damages which the buyer may sustain for being deprived of the ordinary use of the chattel, but not further special damages accruing from the special and unusual purpose not made known and accepted by the seller when he contracted. For instance, when a person failed to repair the ship within the stipulated period, the measure of damages is the sum which the other party might have earned in the ordinary course of the employment of the ship during the delay but not special loss suffered on account of having chartered the ship to a third party. In other words, where two parties have made a contract, which one of them has

broken, the damages which the other party ought to receive should be such as may fairly and reasonably be considered either arising naturally (*i.e.* according to the usual course of things for such a breach of contract) or such as may reasonably be supposed to have been in contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

(Office Order No. 107, dated 3-9-57 & Para 48 of the contract Manual).

4.1. *Potential Loss.*

As stated above, the general measure of damages for delay in supplies is the difference between the value of the stores at the time fixed for their delivery (*i.e.* contract price) and their value when delivered (*i.e.* the market price on the date of actual delivery). If the market price on the date of delivery is lower than the contract rate, we can recover from the supplier as damages, the difference, because the goods purchased are worthless than what has been paid for them. This is what is called 'potential loss' in legal parlance and it is the sum equal to the difference between the price of the goods on the due date and the market price on the date of actual delivery.

4.2. The market price on the date of actual delivery may be assessed on the basis of the contract for the same stores (in cases where stores are marketable) or stores which are best and nearest substitute of the stores originally contracted for (where stores are not marketable), if any placed on or about that date. Even if there is no such contract, the market rate can be assessed on the basis of tenders from *bona fide* sellers opened on about that date.

5.1. *Loss reported by the indentors due to delay in Supplies.*

As stated earlier the quantum of liquidated damages to be levied in a particular case would depend upon the loss sustained due to delay in supplies. The indentors are, therefore, required to intimate to this office the loss, if any, suffered by them on account of delay in supplies. For this purpose an endorsement is required to be made in the copy of the standard letter (from DGS&D-160) granting extension in delivery period asking the indentor/consignee to report loss within a specified time. If no reply is received within one month from the date of completion of supplies, the case should be processed on the assumption that the indentor/consignee has no loss to report.

[Para 232-A(2) of the DGS&D Manual as amended by C.S. No. 224, dated 10-5-63]

5.2. It may be noted that where the indentors make local purchases to meet their immediate requirements without cancelling identical quantity from the A/T placed by DGS&D the extra expenditure incurred by them cannot be treated as loss for the purpose of imposition of liquidated damages to the extent of such extra cost. All that is recoverable in such cases would be token damages equivalent to 10% of the liquidated damages assessed at the rate of 2% provided the firms are responsible for the delay.

(Note under para 240 of the DGS&D Manual and O.O. No. 124, dated 9-12-65)

5.3. Consultation with the indentors in regard to loss suffered due to delay in supplies is not necessary in respect of the following types of contracts :

- (i) Purchase of controlled commodities.

- (ii) Purchase of stores manufacture of which is dependent upon supply of controlled materials against quota certificates issued by the Government where the delay in supply is solely attributable to delay in supply of such materials.
- (iii) Contracts for supply of stores for which the entire production is controlled by the Government.
- (iv) Contracts concluded with unguaranteed delivery where the offer is accepted in consultation with the indenter, and
- (v) Supply orders against Rate Contracts unless the delivery date stipulated has been expressly agreed to by the contractor in writing before placement of the relevant order and where the Government has not in any way interfered with the supplier's discretion to meet the said supply order by directing him to give priority to some other order.

(U.O. No. CSIB/13(30)/1/60, dated 4-9-62)

6. Extra amount payable to the suppliers on account of increase in taxes, duties etc. during the delayed period—Adjustment by way of liquidated damages.

The standard form (DGS&D-160) granting extensions in contract delivery period stipulates that increase in price (in case of contracts where price variation is provided for) or increases on account of enhancement or fresh imposition of sales tax, excise duty, customs duty etc. taking place during the extended period of delivery will not be allowed to the suppliers. Hence the question of payment of such increases in price will not arise where delivery period is extended by using the standard form. However, there may be cases where extensions in delivery period may have to be given without the above condition denying the price increases. In such cases the question whether the increase in price which the purchaser had to incur on account of delay in supplies could be set off against the liquidated damages leviable under the contract should be considered at the time of regularisation of the delivery period. Where suppliers are responsible for the delay and the liquidated damages can be legally levied, the extras paid/payable should be normally recovered by way of liquidated damages.

[Para 233(2) of the DGS&D Manual]

7.1. *Special damages—Cases where price preference is paid for earlier delivery.*

The following clause is incorporated in Annexure to Schedule to Tender (Form No. DGS&D 100-C) which accompanies the tender enquiries issued by this office :

'It should be noted that if a contract is placed on a higher tenderer as a result of this invitation to tender, in preference to the lowest acceptable offer, in consideration of offer of earlier delivery, the contractor will be liable to pay to the Government the difference between the contract rate and that of the lowest acceptable tenderer on the basis of final price F.O.R. destination including all elements of freight, sales tax, local taxes, duties and other incidentals, in case of failure to complete supplies in terms of such contract within the date of delivery specified in the tender and incorporated in the contract. This is in addition and without prejudice to other rights under the terms of the contract'.

7.2. The following clause is required to be incorporated in all advance acceptances of tender and formal acceptance of tender where lower offers have been specifically ignored and contract placed on higher offers for the sake of earlier delivery :

"Special Condition : It should be noted that on the assurance of the earlier delivery at the rate of Rs. F.O.R. offered by you this contract has been placed on you in preference to the lowest acceptable offer of at the rate of Rs..... F.O.R..... In case of failure to complete supplies against this contract in terms hereof within the date of delivery specified herein, you would be liable to pay to the Government the difference between the contract rate and that of the lowest acceptable tenderer on the basis of final price F.O.R. destination including all elements of freight, sales tax, local taxes, duties and other incidentals. This is in addition and without prejudice to the rights of the Government to recover all other losses and damages resulting from delayed supplies including right of cancellation and repurchase at your risk and expense".

7.3. *Circumstances in which price preference penalty clause is not to be incorporated in contracts even if lower offers are ignored.*

(i) In cases where the tenders specifically state in their tenders that they will not accept the clause and yet it had been decided to place orders on such firms.

Wherever a preference is made to the indenter for obtaining approval for accepting the higher offer in preference to the lower offer for the sake of earlier delivery, it should be brought to his notice that the firm quoting higher price has refused to accept the penalty clause so that at the time of giving his approval he is made aware of the fact that he has to pay higher prices without the likelihood of recovery of the difference between the higher rate and the lower one in the event of delay in supplies. The concurrence of the competent authority as indicated in sub-para 7.5 below should be taken in such cases for placing the contracts without price preference penalty clause and the reasons therefor should also be recorded on the file.

(ii) When lower offers are ignored on the ground of capacity being fully booked. There may be cases where the delivery offered both by the lower and higher tenders is guaranteed but the capacity of the lower tender is limited. To give an illustration, both the higher and the lower tenders offer guaranteed delivery at the rate of 40 and 20 units respectively per month. The indenter requires urgently 100 units in 3 months. As the lower tenderer can supply only 20 units a month the order is placed on him for 60 units for delivery within 3 months. The order for balance 40 units is placed on the higher tenderer. In the example given above the full price differential can be recovered from the higher tenderer in the event of delay in supply over two months and proportionate amount if the delay is over one month but less than two months. The price preference penalty clause can, therefore, be incorporated in such contracts.

(O.O. No. 66, dated 19-6-62)

(iii) In cases where lower offer is technically not acceptable on the ground of adverse capacity report.

(iv) In cases where lower offers are ignored to save foreign exchange.

(v) When price preference is specially given to indigenous offer *vis-a-vis* offers for imported stores or to products of cottage and small scale industries in accordance with the existing instructions.

(vi) In cases where lower offers are passed over on account of the fact that the terms and conditions stipulated are not acceptable to the Government.

(vii) Where delivery offered by the lower tender is unguaranteed and it is decided to place order on a firm quoting higher price but guaranteed delivery.

(viii) In some cases it may happen that a tenderer quoting lower price gives a longer but guaranteed delivery while another tenderer quoting a higher price gives an earlier delivery but says that it is not guaranteed. Unless the delivery offered by the higher tenderer is guaranteed, an order should not normally be placed on him for the sake of earlier delivery because in the event of delay the Government would not be legally entitled to recover from him the difference between the contract rate and that of the lowest acceptable tenderer as the delivery is unguaranteed. If, however, from the past experience, the performance of the firm is considered satisfactory and it is proposed to place a contract on them the safer course would be to ask them to give guaranteed delivery and place the contract only after obtaining such a guarantee. Then only the price preference clause can be incorporated in such contracts. If the firm do not agree to give a guaranteed delivery date and yet it is intended to place order on them, the reasons for accepting such an offer in preference to the lower offer should be specifically recorded on the purchase file and the approval of the competent authority should also be taken. In such cases where a reference is made to the indenter to ascertain whether higher price can be paid for earlier delivery, it should be clearly brought to his notice that the offer is subject to unguaranteed delivery and hence the subject to unguaranteed delivery and hence the usual penalty clause cannot be enforced, so that he is made aware of the fact that he has to pay higher prices without guaranteed earlier delivery.

(Office Order No. 75, dated 10-10-60)

7.4. *Grace period of 21 days not to be allowed in case of contracts placed by paying higher price for earlier delivery.*

A specific stipulation should be made in such contracts that the grace period of 21 days will *Not* apply.

7.5. *Delegation of powers for waiver of price preference penalty clause.*

(i) Before placement of acceptance of tender :

Director	Contracts upto Rs 3 lakhs in consultation with Finance.
DDG	Contracts up to Rs 6 lakhs in consultation with Finance.
D.G.	Contracts up to Rs 30 lakhs in consultation with Finance.

(ii) After placement of the A/T but before commencement of supplies if on receipt of the A/T, the contractor objects to the clause or the clause has been incorporated erroneously.

Director	Contracts upto Rs. 3 lakhs in value in consultation with Finance and the indenter.
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Dy. Director General...	Contracts upto Rs 6 lakhs in value in con- sultation with Finance and the indenter.
Director General	Contracts upto Rs 30 lakhs in value in consultation with Finance and the indenter.

*(iii) After placement of the A/T and completion of supplies even if the clause has been incorporated erroneously.

Powers same as in (ii) above.

NOTE : (1) In respect of cases falling under (ii) above, where the contractor objects to the clause, the purchase officer may reconsider the case on merits in consultation with Finance and the indenter and either cancel the A/T or delete the clause, if the supplies are still required or the clause has been incorporated erroneously.

(2) Where the A/T has been concluded with the price preference clause, the approval of the Director General (where the amount of price preference does not exceed Rs. 1,000/-) and the Department of Supply in other cases should be obtained for deleting the clause. Such approval should be obtained even in cases, where it is found after the placement of the A/T that the clause has been incorporated erroneously.

[Para 1(13) of the Department of Supply letter No. 6(4)/66-PI, dated 22-1-67 circulated under O.O. No. 132 of 1967]

7.6. Amount of price preference recoverable in the event of delay in supplies.

When the actual delivery takes place beyond the delivery period stipulated by the lowest acceptable tenderer whose offer has been passed over as the delivery offered by him was not suitable, the entire amount of price differential may be recovered. On the other hand, if the delivery materialises earlier than the delivery period stipulated by the lowest acceptable tender, Government are not entitled to recover the entire amount of price differential but only a proportionate amount. To give an example, if an amount of Rs. 300/- has been paid for earlier delivery by 3 months and the period of delay is only 2 months, we are not legally entitled to recover the entire amount of Rs. 300/- but only a proportionate amount for the period of 2 months of delay i.e. Rs. 200/-. The proportionate amount of price differential recoverable in such cases can be worked out in accordance with the following formula :

$$P : \frac{A \times N \times D}{Y}$$

P : Represents the amount of proportionate price differential to be recovered.

A : Represents the amount of price preference given for one unit.

N : Represents the number of units for which supplies are delayed.

D : Represents the number of days of delay.

Y : Represents the difference (in days) in delivery period offered by the lowest acceptable tenderer and the contractor on whom order has been placed.

NOTES :

(1) The price preference penalty clause entitles the Government to recover the extra amount paid for earlier delivery, in case of delay in supplies. It should be noted that we are not entitled to recover any liquidate damages.

for the period of delay for which the price difference is recovered. To give an illustration, if Rs. 100/- is paid extra for earlier delivery by one month and the delay is only one month, the amount of Rs. 100/- is only recoverable from the contractor. No liquidated damages can be levied in addition to the said amount. If the delay is, however, more than one month, say three months, we are entitled to recover Rs. 100/- as price differential for the first month and in addition liquidated damages for the subsequent two months.

(2) Price differential recoverable in accordance with the penalty clause is the difference between the rate quoted by the tenderer whose offer has been accepted and that quoted by the lowest acceptable tenderer whose offer was passed over on the ground of unsuitable delivery period. In computing the price difference the lowest offer which would be otherwise acceptable but was passed over merely in consideration of delivery should be taken into account and not the lower offers in the field which might have been passed over for various other reasons.

(3) In cases where the proportionate amount of price differential is recovered in accordance with the formula given above, the question of waiving the balance amount over the above the proportionate amount recovered will not arise.

(Office Order No. 75, dated 10-10-60)

7.7. Recovery of price preference paid for earlier delivery in the event of non-supply and cancellation of the contract.

Action should be taken in accordance with the legal opinion reproduced below :

"When the contract is broken by the non-supply of goods, besides the ordinary damages represented by the risk purchase loss, it is also admissible to recover as special damages any price preference loss that may have been suffered because the delivery which had been offered by a specified date has not materialised. The conditions, however, for the recovery of such loss is that the contract must have remained in force after the expiry of the original delivery date and must have been cancelled after some extension. If the contract is cancelled immediately after expiry of the original delivery date, no price preference loss is suffered and, therefore there is no question of recovery of any special damages. If, however, the delivery period is extended or the contract remains in force by mutual consent of parties for any time after the expiry of the original delivery date and it is then cancelled, there is a price preference loss and such loss is recoverable as special damages to the same extent as it would be recoverable if goods had been supplied after delay".

7.8. Special watch to be kept on cases where higher prices are paid for earlier delivery.

The Progress Wing should be specifically asked to progress all contracts where higher prices are paid for earlier delivery. Inspecting Officers should also be vigilant and there should not be any avoidable delay in inspection of stores in such cases. In order to attract attention of the above officers the Supply Sections should indicate on the top left hand corner in the copies of such A/Ts etc. intended for progress Wing/Inspection the following words by means of a Rubber Stamp :

"SPECIAL WATCH HIGHER PRICE PAID FOR EARLIER DELIVERY"

(O.O. No. 75 of 10-10-1960)

7.9. The question as to whether the price preference paid for earlier delivery, which does not materialise, should be treated as loss in the following types of cases has been decided as follows :

Types of cases	Decision
(i) Where higher offer has been accepted on account of earlier delivery but where the price preference penalty clause cannot be incorporated owing to the supplier's refusal to accept the case.	The price preference should be treated as loss in the event of delay in supplies.
(ii) Where lower offer is with unguaranteed delivery while the higher offer is with guaranteed delivery. (This type also covers cases where the capacity of the lower tenderer is booked for a certain period and he quotes delivery subject to completion of pending orders whereas the higher tenderer whose offer is accepted gives a guaranteed delivery).	Price preference cannot be treated as loss.
(iii) Where lower offer passed over is not exactly comparable with the higher offer which was accepted.	In cases where the stores offered by the lower tenderer is considered suitable or acceptable (even though they may not be to the exact specification) but passed over mainly on consideration of delivery, the difference between the two offers should be treated as loss if the delivery does not materialise by the stipulated date. Where the stores offered by the lower tenderer are considered not suitable or acceptable the question of loss does not arise.

(O.O. No. 66, dated 19-6-62)

8.1. *Pre-estimated damages*

As stated in para 3, the provision in the General Conditions of Contract for recovery of liquidated damages cannot be taken as a genuine pre-estimate of damages. In cases where such a pre-estimate is necessary, it should be arrived at independently and with the express consent of the other party to the contract (*i.e.* the supplier) so as to constitute a proper pre-estimate of damages. This is called "pre-estimated damages" as distinct from liquidated damages leviable under the General Conditions of Contract.

8.2. According to the existing instructions the purchase Officers are required to make provision for recovery of pre-estimated damages in cases where the stores contracted for are not of ordinary commercial nature or stores are such where damages for breach or delay would not possibly be or not likely to be ascertainable in the ordinary way. Where such a provision is considered necessary, it should be incorporated in the invitation to tender.

(O.M. No. Pur-19/Recom. 106/55, dated 21-8-1957)

8.3. Instructions also exist to the effect that in order to prevent delays in supplies due to firms quoting unrealistic delivery dates, provision may be made for recovery of pre-estimated damages wherever possible. The damages to be recovered should be worked out on rational principles.

(Office Order No. 145, dated 3-12-66)

8.4. Where provision is made for recovery of pre-estimated damages, the ordinary provision for recovery of liquidated damages under the General Conditions of Contract will not apply. Specific stipulation should be made in such cases that clause 14(7)(i) of the General Conditions of Contract (Form No. DGS&D-68 Revised) will not apply.

(Office Order No. 72, dated 7-7-67)

8.5. Normally claims under the pre-estimated damage clause should be enforced in all cases and the waiver authorised only where we are not legally entitled to enforce the recovery.

(D.O. No. CSIB/13(3)/I/62, dated 3-5-1965)

9. *Points to be taken into consideration in making decision to impose/waive liquidated damages.*

(i) The question of recovery of liquidated damages need not ordinarily be considered in respect of contract upto Rs. 1 lakh in value placed up to 1-10-66 except in the following types of cases :

- (a) Contracts where higher prices have been paid for earlier delivery and
- (b) Contracts containing pre-estimated damages clause.

(ii) The following factors should be taken into account while examining cases for the purpose of levy of liquidated damages :

- (a) Whether the indenter has suffered any actual or potential loss due to delay.
- (b) Whether delay in supplies has resulted in payment of additional sales tax, excise duty or other imposts etc.
- (c) Whether higher prices have been specifically paid for earlier delivery.
- (d) Whether the delay has resulted in payment of additional freight charges.
- (e) Whether the contract contains provision for recovery of pre-estimated damages.
- (f) Whether the delay in supplies has been willful on the part of the firm.

(Office Order No. 13, dated 17-2-67)

(iii) The question of levy/waiver of liquidated damages has to be examined in each case taking into account the factors mentioned above and a decision taken on the merits of each case.

10. *Powers for waiver of liquidated damages*

(a) Cases involving actual loss :

Dy. Director General	Loss upto Rs. 100/-
Director General	Loss upto Rs. 1,000/-

Waiver of pre-estimated damages will be considered as waiver of actual loss.

- (b) Cases where higher prices have been paid for earlier delivery which does not materialise :

In such cases the price differential should be recovered and if circumstances arise under which it is proposed to waive its recovery, powers for such waiver will be governed by (a) above. Waiver of liquidated damages over and above the price differential will be as follows :

DDG	Cases within the purchase powers of Director.
D.G.	Full powers in all cases.

- (c) Cases where there is potential loss (*i.e.* loss assessed on the basis of fall in market prices during the delayed period) and other losses reported by the indentors which cannot be demonstrably proved and legally recovered from the suppliers :

D.D.G.	Loss upto Rs. 100/-
D.G.	Loss upto Rs. 5,000/-

- (d) Cases where higher prices have not been paid for earlier delivery and where the indentors have not reported any loss.

Dy. Director	All cases within the purchase powers of Dy. Director and the Director provided the delay in supplies is not more than 5 months (subject to 10% random post facto review by the Director).
Director	All other cases upto the value of Rs. 30 lakhs (Subject to 10% of the cases in which the purchase powers have been exercised by DDG and above being reviewed by DDG).

Notes

(1) Extra expenditure incurred on account of increase in or fresh imposition of taxes, duties etc. during the delayed period should be treated as actual loss if the suppliers are responsible for the delay. The question whether the supplier is responsible for the delay or not will be decided by the officer within whose powers of purchase the case falls. In doubtful cases, he will take the orders of the next senior officer before decision is taken to absolve the supplier of the responsibility for the delay. Where the Government have to incur additional expenditure by way of increase in price on account of increase in/fresh imposition of taxes, duties etc. due to delay owing to omissions or faults on the part of the purchase officers/Sections, the Directors are not empowered to regularise the delivery period even though such increase will not be considered as actual loss. Such cases should be shown to the Director General with the recommendation of the Director.

(Office Order No. 38, dated 16-4-59)

(2) The sanctions to the waiver of liquidated damages should indicate the particular category under which the waiver falls *i.e.* whether it falls under (a), (b), (c) or (d) above. This should be invariably indicated in the endorsement to the Pay & Accounts Officer concerned in the copy of the letter regularising the delivery period. The designation of the officer whose sanction was obtained for waiver of liquidated damages should also be indicated in the endorsement.

(3) (i) In case the purchase officer finds it necessary to revise his earlier decision imposing liquidated damages and to waive recovery thereof,

he should obtain the approval of the next senior officer for doing so. The Director General will be competent to revise his own earlier decision.

[Department of Supply letter No. 6(4)/66-PI, dated 22-11-67 circulated under O.O. 132, dated 8-12-67]

(3) (ii) If on re-examination of a case in the light of a representation from the firm against our decision, the intention is to reduce a portion of Government's claim for liquidated damages, the firm's representative should be sent for and asked orally to give a letter in writing to the effect that the firm would pay the said amount (*i.e.* the reduced amount) in full and final settlement of the claim for liquidated damages. The idea of taking such a declaration is to avoid the contingency of the matter being referred to arbitration etc. after we have communicated our decision to reduce the damages imposed. This is not to be disclosed to the firm and in case the firm refuse to give such a declaration the original decision should stand.

(Para 236 of the DGS&D Manual)

(4) The Director General is competent to waive liquidated damages in case of contracts over Rs. 30 lakhs in value where there is no actual loss etc. of more than Rs. 1,000/-. In cases where the value of the A/T exceeds Rs. 1 crore, if open tenders have been invited and Rs. 50/- lakhs in other cases, Associated Finance should also be consulted before decision is taken.

[Para 4 of the Department of Supply letter No. 6(4)/66-PI, dated 22-11-67 circulated under O.O. 132, dated 8-12-67]

11. Miscellaneous provisions

(i) While submitting proposals for regularisation of delivery period, the proforma for waiver/imposition of liquidated damages in form No. DGS&D-147 as modified *vide* O.O. No. 17, dated 5-2-68, should also be submitted. (Office Order No. 96, dated 29-6-57 and Office Order No. 17, dated 5-2-68)

(ii) Where stores are accepted under deviation with price reduction, the purchaser cannot in addition to the price reduction, claim liquidated damages for delay in delivery as the reduction in price implies that the parties to the contract have by mutual agreement varied the terms of the contract and a new and substituted contract comes into existence. The terms of the original contract regarding liquidated damages etc. will not, therefore, hold good in respect of the new contract.

With a view to safeguard the interests of the Government in such cases of contracts where stores are accepted under deviation with price reduction after the expiry of the original delivery period, the purchase officer should give a notice to the firm as in the standard letter circulated under Office Order No. 103, dated 15-9-1966 intimating the intention of the purchaser to claim liquidated damages etc. This notice may be communicated to the contractor at the time of issue of amendment to contract agreeing to accept the stores under deviation with price reduction.

(O.O. No. 103, dated 15-9-66)

(iii) Liquidated damages for delay should not normally be imposed on Government Establishments undertaking contract work. If it is decided to deviate from this rule, sanction of the Department of Supply should be obtained. Serious cases of delay should be reported to the Head of the

Department of the State Government concerned. The above will not apply to Government Undertakings as distinct from Government Establishments. The question of levy of liquidated damages from Government Undertakings should be decided on the merits of each case.

[Note (3) under para 233(1) of the DGS&D Manual]

(iv) Where extensions in delivery period are granted without the denial clauses (i.e. the conditions denying the increase in taxes, duties etc. taking place during the delayed period) the purchase officers have to obtain a 'No claim certificate' from the suppliers before finalisation of the case. The standard form of letter for calling such 'No claim certificate' is given in Office Order No. 108, dated 16-10-59. The certificate is to be called for only where suppliers are found responsible for the delay.

(Office Order No. 108, dated 16-10-59)

(v) Liquidated damages can be levied on the contract price including elements of sales tax, customs duty, excise duty etc. Liquidated damages is also leviable in respect of stores lost in transit (where there is delay in despatch/delivery) provided the suppliers are responsible for safe arrival of stores at destination.

(Office Order No. 94, dated 14-9-59)

(vi) In case of contracts for fabricated stores requiring controlled raw materials, no liquidated damages should be levied if delay in supplies is due to late receipt of raw materials for which the supplier is not responsible.

(vii) The question of liquidated damages would not arise in case of contracts for supply of stores, the entire production of which is controlled by the Government.

(Office Order No. 18, dated 9-3-60)

(viii) The question of levy of 1/d in respect of trial, educational orders etc., should be decided on the merits of each case taking into account the circumstances in which the order was placed.

(ix) In case of developmental orders placed for development of indigenous capacity, for manufacture of imported stores the extensions in delivery period should be sympathetically considered and normally issued without liquidated damages.

[Memo. No. CSIA/49(95)/1, dated 28-4-67]

(x) The additional expenditure which the Government have to incur by way of increase in or fresh imposition of sales tax, customs duty or excised duty in case of replacement supplies (replacement having become necessary on account of rejection of defective supplies, stores lost or damaged in transit etc.) should be treated as a loss and can be recovered by way of liquidated damages leviable under the contract.

(Office Order No. 49, dated 30-4-62)

Standard Distribution

On file No. CDN-2/8(2)/1/68.

Deputy Director(CS-I)

Recommendation

5.175. The Committee may be apprised of the final position in regard to the supply of stores by the firm against the advance of Rs. 99,294 made to it.

Sr. No. 28 of 21st Report (4LS)

Action taken

The firm have completed delivery of 146 B/s of 'B' Twill Bags under their Challan No. 18905 dated 4-11-1967.

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M. No. F. 43(18)/66-PI, dated 19-7--68].

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE REPLIES OF GOVERNMENT

5.171. The Committee note that the grounds on which the Court rejected the case were :—

- (i) Government could not produce satisfactory evidence in support of the payment of the advance of Rs. 99,294.
- (ii) The standard terms of contract (Form-WSB-133) (applicable to the contract in question, under which recovery of Government dues against one contracts can be effected from the dues payable to firms under any other contract, were not produced by Government.
- (iii) The basis for the rejection of the tendered goods was not correct.

Sr. No. 27 (Para 5.171) of 21st Report (4 LS)

5.172. The Committee are unable to appreciate why Government did not present the documents to the court and satisfy them. The Committee would like Government to thoroughly investigate the reasons for this failure and to fix responsibility and issue detailed instructions, in consultation with the Ministry of Law, to avoid the recurrence of such lapses.

Sr. No. 27 (Para 5.172) of 21st Report 4 (LS)

Action Taken By Government

The Ministry of Law, have stated that the system of conduct of cases arising in the Ordinary Original Jurisdiction of the Calcutta High Court has been completely re-organised. The cases are now handled by the Solicitors of the Ministry of Law who have been appointed on a full time basis and as such there is little likelihood of recurrence of any such lapses in the future.

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M. No. F. 43(18)/68-PI, dated 19-7-68].

5.173. The Committee further suggest that the panel of advocates reference to their performance so that only such advocates as show reference to their performance so that only such advocates as show sustained interest in Government cases are retained on the panel.

Sr. No. 27 (Para 5.171) of 31st Report (4 LS)

Action Taken

The Ministry of Law have stated that the panel of Advocates has also since been revised in consultation with the Chief Justice of the Calcutta High Court.

[Ministry of Works, Housing & Supply (Deptt. of Supply) O.M. No. F. 43(18)/66-PI, dated 19-7-68].

Recommendation

5.173. The Committee further suggest that the panel of advocates maintained by Government may be reviewed periodically, with reference to their performance, so that only such advocates as show sustained interest in Government cases are retained on the panel.

(Serial No. 27—Appendix VIII to the PAC's 21st Report 4th Lok Sabha).

Action taken

(1) Government generally accepts the recommendation made by the Public Accounts Committee, but feels that it would not be appropriate to lay down any specific period at the expiration of which the panel may be reviewed. The performance and interest taken by panel Counsel are watched both by the Ministry of Law at Delhi and its Branch Secretariat at Calcutta and Bombay. The panels are reviewed as and when there appears to be need for doing so.

(2) The panel of Counsel for Central Government cases at Calcutta High Court was revised on 1-7-1961, 1-4-1962, 16-1-1965 and lastly on 31-5-1968. Such revision apart, the panel is amended from time to time consequent upon vacancies in the panel on account of demise, elevation to the Bench, resignation, etc. of panel Counsel.

(3) The panel of Counsel for Central Government cases in Bombay was last revised in 1964, superseding the earlier panel of November, 1959. Even in the panel made in 1964, many more new names have been substituted and added from time to time to cope up with Government work.

[Ministry of Law O.M. No. F. 5(2)(14)/68-B&A, dt. 4-2-1969].

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation/Observations of the Committee

The Committee note that out of 129 societies which have defaulted in the payment of loans, as many as 107 have gone into liquidation. The Committee desire that the Government should take suitable measures to ensure recovery of loans to the maximum extent possible already given to the societies under liquidation. The Committee also suggest that Government should investigate in detail the reasons due to which societies to whom Rs. 10,000 or more were advanced as loans, went into liquidation. Apart from taking suitable measures in the light of this analysis to effect recovery from other Cooperative Societies, the Committee would like Government to review the criteria for advancing loans to cooperative societies so as to avoid recurrence of such cases. [Serial No. 5—Para 3.16 Appendix VIII of the P.A.C. 21st Report (4th Lok Sabha)].

As a result of constant efforts being made, the recovery effected during the year 1967-68 is as under :—

(in rupees)					
Balance outstanding as on 31-3-67		Amount recovered		Balance as on 31-3-1968	
Pl.	Int.	Pl.	Int.	Pl.	Int.
3,92,591.68	47,793.00	30,405.91	14,741.00	3,62,185.77	47,136.92*

(*Includes further interest on overdue principal).

Following steps have been taken for the early recovery of outstanding loans from the societies under liquidation :—

Periodical meetings of the liquidators of the concerned societies are being held, where Registrar of Cooperative Societies, Delhi, reviews the progress of recovery and the efforts being made by them in this behalf. Wherever necessary, liquidators contact the Collector personally for pushing up the recoveries and taking suitable action. During the year 1967-68, 41 meetings were held for the purpose.

2. 381 cases involving the loans amounting to Rs. 3,55,850 have been referred since 1962-63 onwards, to the Collector, Delhi for recovery as arrears of land revenue.

3. A decision has been taken by the Delhi Administration on 30-7-1968 to delegate the powers of Collector to the Assistant Registrar of Cooperative Societies so that the recovery of arrears may be expedited.

The total number of societies which were advanced loans of Rs. 10,000 or more and which went into liquidation is 40.

An examination of the causes leading to the liquidation of these societies reveals that these societies were brought under liquidation for one or more reasons indicated below :—

- (a) These societies were mainly organised for the Refugees many of whom, in search of employment or business to rehabilitate themselves, have left Delhi and migrated to other parts of the country.
- (b) Lack of interest on the part of management and members due to which some of these societies sustained heavy losses.
- (c) Due to gross mismanagement and serious irregularities in some of these societies, there was no possibility of the societies being rehabilitated.
- (d) Several societies ceased functioning due to large scale and universal default in repayment of loans.

The main criterion for advancing loans to Cooperative Societies is their credit worthiness and the standard of management. The Union Territories administrations have been again requested to exercise caution in determining the suitability of a society before giving the loans and advances.

As regards the recovery of loans given to societies for the rehabilitation of displaced persons, the Committee suggest that the Department of Co-operation should intimate the details of recovery from members of these Co-operative Societies to the Chief Settlement Commissioner so that these could be adjusted, if admissible, against the compensation claims, if any, of these displaced persons. [Serial No. 5 Para 3.17—Appendix VIII of the P.A.C. 21st Report (4th Lok Sabha)].

As suggested by the Committee, Registrar of Cooperative Societies, Delhi, had forwarded a list of the defaulting societies to the Chief Settlement Commissioner, Ministry of Labour Employment and Rehabilitation with the request to examine if the society's dues could be adjusted against any pending compensation claims. However, the Chief Settlement Commissioner had expressed his inability to initiate action in the absence of index number of the claims etc.

It may be mentioned that these loans were given for the purpose of rehabilitation of the refugees at the time of partition of the country. No such loans are now being given.

The Committee find from the analysis of losses furnished by Government that in most of the cases, it is due to high expenditure on staff and unsatisfactory management. The Committee suggest that Govt. should keep a close watch on the working of societies in which Government had made substantial investments so as to ensure that these are managed properly and that losses are eliminated.

The Committee are not able to appreciate how a society in which Government have invested Rs. 4.75 lakhs and which has a turnover of Rs. 2 crores could suffer losses. The Committee would like Government to ensure prudent management of the society to safeguard public funds invested in it. [Serial No. 6 (Para 3.27 & 3.28)—Appendix VIII].

The observations of the P.A.C. have been noted and action taken for compliance. The Government nominees on the management of the State

partnered societies and cooperative department's officers have been asked on 31-7-67 to watch the working of the concerned societies to ensure that they are managed properly and losses are eliminated.

To safeguard the interests of Government and public funds the Union Territories Administrations have been asked to issue suitable instructions to all Government nominees to attend regularly the meetings of the Board of Management and to make a report to their higher officers whenever defects are noticed in the working of the societies.

The Delhi Consumer Cooperative Wholesale Store suffered losses although it had a good turnover mainly due to the following reasons :—

- (a) Preponderance of controlled commodities in the sales;
- (b) Locking up of capital with primaries to whom supplies were made on credit;
- (c) Heavy establishment expenses (Pay roll expenses) and other contingent charges in relation to the low gross profit.
- (d) Huge outstanding advances against certain parties and members of the Managing Committee (the advances outstanding on 21-5-67 were Rs. 4.94 lakhs);
- (e) Indiscriminate and ill-timed purchases made by unauthorised hands on behalf of the stores; and
- (f) The recruitment of inexperienced/inefficient staff.

The bulk of the turnover of the society was accounted for only by rationed commodities where the margin of profit is very low. As the operations in these commodities proved to be uneconomical, the society gave up the business in October 1967. Fast selling and profitable items are being introduced like cycle tyres and tubes, scooter tyres, vanaspati, blades, general merchandise, sugar etc. As regards recovery of amounts locked up with primaries, a recovery cell has been set in the office of the Wholesale Society in charge of an officer lent on deputation by the Delhi Cooperative Department. Out of the amounts outstanding Rs. 95,128.97 have been recovered. Arbitration reference have also been filed in 41 cases out of which awards in 23 cases have been obtained. Proceedings are in progress in the rest of the cases.

Notices preparatory to arbitration have also been served upon other stores defaulting payment. Efforts are also being made to reduce expenses on overheads like establishment charges.

As the elected management had failed to run the institution on proper lines and there were serious irregularities in the working of the store, losses continued piling up, the Delhi Administration took notice of the worsening situation and in an attempt to improve the quality of management, superseded the elected management and replaced it by a nominated managing committee on the 28th June, 1967. The superseded managing committee challenged the order of the Administration through a writ petition filed in the Delhi High Court. Because of the pending writ petition and the uncertainty of its future, the nominated managing Committee could not work effectively. The Delhi High Court quashed the order of supersession on 21st March, 1968. Consequently the old managing committee has taken control of the affairs of the Store on the 28th March, 1968. The Delhi Administration

propose to go in appeal and has filed an application for special leave to appeal before the Supreme Court.

[Ministry of Food & Agri. C.D. & Coop. (Deptt. of Coop) O.M. No. 6-8/68-TB&C dt. 5-10-68]

Recommendation

"The Committee regret to note that an amount of Rs. 151.53 lakhs (Rs. 53.58 lakhs principal and Rs. 97.95 lakhs as interest) was over-due for recovery from the Delhi Municipal Corporation on account of the loans given by the Central Government for implementation of certain water supply and sewage schemes. It is also strange to note that even when the loans were sanctioned for a specific purpose, the realisations of water and sewage taxes were credited to the general funds of the Corporation instead of being placed in a separate account for the repayment of the loan. The Committee feel that repayment of the instalments of the loans and interest should have been the first charge on the realisations from water and sewage taxes."

Serial No. 11 of Appendix VIII of the Twenty-first Report (Fourth Lok Sabha) of the P.A.C. (1967-68). Para No. of Report 4.15.

Action taken

The accounts of the Water Supply and Sewage Disposal undertaking were already being maintained separately from those of the General Wing, except in the case of the collection of—

- (a) Water charges recovered on the basis of metered water supply and flat rate supply; and
- (b) water tax and scavenging tax collected as components of the property taxes.

2. According to the practice existing in March, 1967, so far as amounts collected in respect of (a) above were concerned, those were credited straight away to the account of the Undertaking. The amounts realised in respect of (b) above, which were recovered as components of property taxes were initially credited to the accounts of the General Wing and later credited by that Wing to the accounts of the Undertaking. However, an amount of Rs. 120 lakhs on account of water tax and scavenging tax collected by the General Wing up to 31st March, 1967, on behalf of the Water Supply and Sewage Disposal Undertaking has not been transferred to the account of the Undertaking as yet. The reason for this short deposit by the General Wing is again their precarious ways and means position. The said amount of Rs. 120 lakhs forms part of the outstanding amount of Rs. 636 lakhs against the General Wing of the Municipal Corporation of Delhi.

3. In order to ensure that the accounts of the two wings of the Corporation (General Wing and the Water Supply and Sewage Disposal Undertaking) remain completely separate, necessary orders were issued by the Commissioner on the 28th March, 1967 (copy enclosed) and the procedure given therein is being followed strictly with effect from 1-4-1967. The Water Supply and Sewage Disposal Undertaking have also certified that all the amounts collected by the General Wing on its behalf have been credited to their account during 1967-68.

4. The Lt. Governor, Delhi, had written to the Commissioner, Delhi Municipal Corporation in May, 1967, instructing *inter alia* that—

“the repayment of loans and interest charges advanced by the Government of India should be the first charge on the revenues of the Undertakings and steps should be taken to pay these up.”

In this connection, the Undertaking have pointed that while putting this condition, the huge expenditure on revenue account incurred by them on the salary of staff and the production of water and disposal of sewage had not been taken into account. This is an expenditure which by no means, can be postponed even for a single day. However, the Undertaking have assured that they would repay the loan instalments (including interest thereon) after they have received their dues outstanding against the General Wing of the Delhi Municipal Corporation and the New Delhi Municipal Committee. According to the Undertaking, the outstanding amounts against the General Wing of the Municipal Corporation of Delhi and the New Delhi Municipal Committee as on 31st March, 1968, amounted to Rs. 636 lakhs and Rs. 175 lakhs respectively, whereas the amount of overdue instalments (principal and interest) as on 31st March, 1968, is Rs. 442.72 lakhs. The W. S. and S. D. Undertaking have already sought confirmation of the amount of Rs. 636 lakhs outstanding against the General Wing of the Delhi Municipal Corporation and the same is awaited. In regard to the sum of Rs. 175 lakhs against the New Delhi Municipal Committee, the position is that the New Delhi Municipal Committee had raised a dispute about the quantity of water supplied to them and the cost thereof, as charged by the Delhi Water Supply and Sewage Disposal Undertaking. This dispute is under consideration of the Lt. Governor, Delhi, and his final award about the amount payable by the New Delhi Municipal Committee is expected to be received shortly. The New Delhi Municipal Committee has not, however, accepted the outstanding amount of Rs. 175 lakhs as per records of the W.S. & S.D. Undertaking.

[Ministry of Health F.P. (Deptt. of Health) D.O. No. 16-14/68-PHE, dt. 1/8th April 1969].

ANNEXURE

SUBJECT :—Separation of the accounts of the Water Supply & Sewage Disposal Undertaking from those of the General Wing of the Municipal Corporation of Delhi.

At a meeting held in the Cabinet Secretariat to-day it was decided that we should take steps to immediately separate the account of Water Supply and Sewage Disposal Undertaking from those of the General Wing of the Municipal Corporation of Delhi.

2. Already, the accounts of the Water Supply and Sewage Disposal Undertaking are being maintained separately from those of the General Wing except in the case of the collection of—

- (a) Water charges recovered on the basis of metered water supply and Flat rate; and
- (b) Water tax and scavenging tax collected as components of the property taxes.

3. So far as the collection in respect of Water Charges recovered on the basis of metered water supply and flat rate are concerned, these are already being credited straight away to the accounts of the Water Supply and Sewage Disposal Undertaking.

4. As regards the water tax and scavenging tax, which are recovered as components of property taxes, these are credited to the accounts of the General Wing of the Municipal Corporation of Delhi and later credited to the accounts of the Water Supply and Sewage Disposal Undertaking. This year, the entire recoveries on these accounts have already been credited to the accounts of the Water Supply and Sewage Disposal Undertaking. In the previous years, however, a sum amounting to Rs. 100 lakhs was not so credited and that remains to the debit of the accounts of the General Wing and forms a part of about Rs. 400 lakhs outstanding against the General Wing of the Municipal Corporation of Delhi.

5. In order to ensure that the account of the two wings remain completely separate, the following procedure shall be followed with effect from the 1st April, 1967 :—

The bills sent to the property-owners contain the following four components of the property-taxes, namely—

- (i) General Tax;
- (ii) Water Tax;
- (iii) Scavenging Tax; and
- (iv) Fire Tax.

The total amount received by the Assessment and Collection Department will be credited to the Municipal Treasury and separate challans prepared one in respect of water tax and the scavenging tax and the other relating to general tax, fire tax and other taxes. A copy of the Challan relating to the water tax and scavenging tax will simultaneously be sent daily by the Assessment and collection Department to the Deputy Chief Accountant, Water Supply & Sewage Disposal Undertaking. The following day, the Accounts Department of the General Wing will issue a cheque in favour of the Water Supply & Sewage Disposal Undertaking in respect of the collection made the previous day, and intimated to it in the challan sent by the Assessment and Collection Department. In this way, the collection made the previous day by the General Wing on behalf of the Water Supply and Sewage Disposal Undertaking will be deposited with the Water Supply and Sewage Disposal Undertaking the next day.

The procedure should be strictly followed.

Recommendation

“The Committee hope that, with the implementation of the instructions issued by the Lt. Governor, Delhi, in May, 1967, it would be possible for the Government to get back instalments of loans and interest due from the Municipal Corporation. The Committee need hardly stress that, when loans are granted for specific purposes, their repayment on due dates should be insisted upon and defaults in repayments should be viewed seriously. The Committee would also like to be informed of the recoveries of the over-due instalments in this case.”

Serial No. 12 of Appendix VIII of the Twenty-first Report (Fourth Lok Sabha) of the P.A.C. (1967-68). Para No. of Report 4.17.

Action taken

The accounts of the Water Supply and Sewage Disposal Undertaking are now being maintained separately. The position has also been stated in the note relating to para. 4.15.

2. The amounts that are received by the General Wing on account of water tax and scavenging tax are also being credited immediately in the accounts of the Water Supply and Sewage Disposal Undertaking.

3. As regards rendering of full accounts of the loans and grants released by the Government, the Undertaking have stated that the loan cannot be said to be fully accounted for unless the expenditure therefrom is adjusted in the accounts of the Delhi Water Supply and Sewage Disposal Schemes/ Works. During the First and the Second Five Year Plans, the Works were executed through the agency of the Central Public Works Department and advances for executing those works were paid to them. While the works were completed by the C.P.W.D., the accounts thereof were not generally rendered by them and even upto now a sizeable amount of the advances is outstanding against the C.P.W.D. The Chief Engineer, C.P.W.D. has all along been reminded to tender the account of all the advances. The Water Supply and Sewage Disposal Undertaking are taking up the matter with the Deptt. of Works, Housing & Urban Development to expedite the settlement of accounts and refunding the unspent balance out of the advances paid to the C.P.W.D.

4. As already stated in the note relating to para 4.15, the Water Supply and Sewage Disposal Undertaking are making all efforts to repay the loan instalments (including interest thereon) but this is contingent on the fact that their dues outstanding against the General Wing and the N.D.M.C. are received by them. The Government of India have already seriously viewed the defaults in repayments by the Undertaking. This question was last discussed in the Third Meeting of the Committee of Secretaries. It was stated that the Morarka Commission had gone into this question and it would have to be further reviewed after the report was received by the Government. The existing tariff may also have to be re-examined, if necessary.

5. The position regarding recoveries of the over-due instalments as on 31st March, 1968 is as under :—

Principal	Rs. 144·89 lakhs
Interest	Rs. 297·83 lakhs
Total Rs.	Rs. 442·72 lakhs

No payment was made by the Undertaking during the period from 1-3-65 to 31-3-68. They have, however, made a payment of Rs. 20 lakhs towards repayment of loans to the Government of India on the 4th April, 1968.

[Ministry of Health Family Planning (Deptt. of Health) O.M. No. 16-14/68-PHE, dt. 1/8th April 1969].

Recommendation

“The Committee understand that a Commission is at present looking into the unsatisfactory state of finances of the Delhi Municipal Corporation. The Committee have no doubt that, based on the findings of this Commission,

Government will take adequate measures to put the state of finances of the Delhi Municipal Corporation on a sound footing.”

Serial No. 12 Appendix VIII of the Twenty-First Report (Fourth Lok Sabha) of the P.A.C. (1967-68). Para No. of Report 4.18.

Action taken

The requirements have been noted and the Ministry of Home Affairs will be requested to take necessary action at the appropriate time. In this connection, para 4 of the note relating to para 4.17 of Serial No. 12 may kindly be seen.

[Ministry of Health F.P. (Deptt. of Health) D.O. Letter No. 16-14/68-PHE, dt. 1/8 April 1969].

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation

2.31. The Committee regret to note that the various financial irregularities involving a sum of Rs. 73,741 were committed by the cashier in the office of the Regional Passport Office, Madras, since April, 1959, and these came to light only in December, 1965, i.e., after a lapse of six years.

2.32. The Committee note that the cashier concerned has already been convicted by the lower court for a term of five years imprisonment and a fine of Rs. 6,000 and that he has filed an appeal in the Madras High Court. Since the appeal is still pending, the Committee would not like to comment in detail on this particular case. The Committee have no doubt that Government will take suitable action against all those who are held responsible for the embezzlement and the failure to detect malpractices in time. The Committee should be informed in due course of the action taken against them.

2.33. The Committee note that instructions to avoid a recurrence of such cases of fraud in security deposit fees were issued by the Ministry of External Affairs in November, 1966, and that the adequacy of these instructions is being examined again by Government. The Committee suggest that the procedure of accepting deposits and their remittance to Government account or refund to the person concerned should be fully gone into by Government in consultation with Audit and detailed instructions issued to avoid the recurrence of such cases.

[Sr. No. 49—21st Report (4 LS)]

Action taken

Action against the alleged delinquent officials and failure to detect malpractices in time is in hand and the Committee would be informed in due course of the action taken against them.

The procedure for accepting deposits and their remittance to Government account or refund to the persons concerned has been fully gone into and draft detailed instructions are under examination of the Audit Authorities. A copy of the instructions will be made available to all concerned on receipt from the Audit.

Ministry of External Affairs O.M. No. (BFII)7340/1/68 dated the 16th November, 1968.

NEW DELHI,

April 28, 1969.

Vaisakha 8, 1891(S)

M. R. MASANI,
Chairman,
Public Accounts Committee.

APPENDIX I

Summary of outstanding recommendations

Sl. No.	Paragraph	Ministries/Departments concerned
8	3·50, 3·51 & 3·52	Food, Agriculture, Community Development & Co-operation
9	3·57	Do.
10	3·62 & 3·63	Do.
15	5·42	Department of Supply
16	5·47	Do.
22	5·115	Do.
29	5·186	Do.

APPENDIX II

Summary of Conclusions/Recommendations

Sr. No.	Para No. of the Report	Recommendations
1	2	3
1	1.4	<p>The Committee desire that replies to the outstanding recommendations contained in the Report should be submitted to them expeditiously.</p>
2	1.7	<p>Deptt. of Cooperation</p> <p>The Committee regret to observe that not much headway has been made in the recovery of loans given to the Cooperative Societies although 381 cases involving loans amounting to Rs. 3,55,850 had been referred since 1962-63 onwards to the Collector, Delhi for effecting recovery as arrears of land revenue. The Committee desire that Government should take effective measures to recover the outstanding dues and interest thereon expeditiously.</p> <p>The Committee note that 40 Cooperative Societies which were each advanced loans of Rs.10,000 or more had gone into liquidation. The Committee regret to observe that the main causes leading to the liquidation of these Societies were lack of interest on the part of management resulting in gross mismanagement and serious irregularities. The Committee feel that Government which had advanced substantial amounts to these Societies should have kept proper and contemporaneous watch over the functioning of these Societies. The Committee hope that before granting financial assistance to Cooperative Societies, in future, the Delhi Administration will invariably verify the viability of the Society, its managerial capability and the standing of the Members of the Society. The Committee need hardly stress that as soon as a default of the part of a Cooperative Society comes to notice, necessary remedial measures should be taken before the position deteriorates to a point that the recovery of loans granted by Government is jeopardised.</p>
3	1.10	<p>Do.</p> <p>The Committee note that the Chief Settlement Commissioner had expressed his inability to initiate action for the recovery of loans due from the Societies for rehabilitation of displaced persons by adjusting them against pending compensation claims, if any, in the absence of index number of the claim. This is indicative of the fact that proper care was not observed in taking down all relevant particulars of the Members of the Cooperative Society so as to secure Government's loans to the maximum extent possible. The Committee suggest that Government should issue suitable instructions for noting down all relevant details in respect of the Members of the Cooperative Society before any loan is granted, so that in the event of default, it could be recovered from all the available resources of the Members.</p>

1	2	3	4
4	1.13	Deptt. of Coopera- tion	The Committee regret to note the losses suffered by the Delhi Consumer Cooperative Wholesale Store in which Government have invested Rs. 4.75 lakhs were mainly due to heavy establishment expenses, huge outstanding advances against certain parties and Members of the Managing Committee, indiscriminate and ill-timed purchases and the recruitments of inefficient staff.
5	1.14	--do--	The Committee take a serious view of the irregularities in working of the society which has resulted in piling up of losses. The Committee suggest that in the light of the lapses found in the working of this Cooperative Society a suitable check list should be devised for exercising contemporaneous and factual check in the working of the Cooperative Societies in order to retrieve the position before it becomes too late.
6	1.15	--do--	The Committee note that Government have applied for special leave to file an appeal before the Supreme Court against the judgement of the High Court quashing the order of supersession of the Managing Committee. They would like to know the outcome of the application.
7	1.16	--do--	The Committee need hardly stress that every effort should continue to be made to recover the outstanding amounts due to the Cooperative Society as early as possible.
8	1.19	Health	<p>The Committee regret to note that the amount of overdue instalments of the loan repayable by the Water Supply and Sewage Disposal Undertaking to the Government of India has increased from Rs. 151.53 lakhs (Rs. 53.58 lakhs) principal and Rs. 97.95 lakhs interest) as on 31st March, 1966 to Rs. 442.72 lakhs (Rs. 144.89 lakhs principal and Rs. 297.83 lakhs interest) as on 31st March, 1968 (the Undertaking has made a payment of Rs. 20 lakhs towards repayment of loan on 4th April, 1968).</p> <p>The Committee desire that repayment of loans and interest should be the first charge on the Water Supply and Sewage Disposal Undertaking, and they would like Government to ensure that the Water Supply and Sewage Disposal Undertaking honour their commitments in this behalf.</p> <p>According to the Water Supply & Sewage Disposal Undertaking, their outstanding dues against the General Wing of Municipal Corporation of Delhi and New Delhi Municipal Committee as on 31st March-1968 amounted to Rs. 636 lakhs and Rs. 175 lakhs respectively.</p> <p>The Committee would also suggest that a suitable long-term arrangement should be evolved so as to ensure that future payments by these local bodies to the Water Supply & Sewage Disposal Undertaking are made in time.</p>

1	2	3	4
9	1.20	Health Work & Housing	Another disturbing fact brought to the notice of the Committee is that CPWD who executed the works for the Water Supply and Sewage Disposal Undertaking in the First and Second Five Year Plans have not yet rendered detailed accounts. This is an extremely unsatisfactory state of affairs. The Committee suggest that Government should have the accounts finalised by a target date to be fixed in that behalf.

